

code of federal regulations

Commerce and
Foreign Trade

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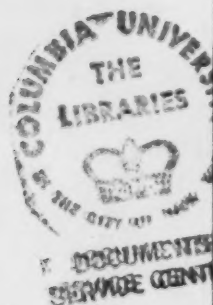
PARTS 0 TO 299

Revised as of January 1, 1986

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Commerce and Foreign Trade

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PARTS 0 TO 299

Revised as of January 1, 1986

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AS OF JANUARY 1, 1986

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Commerce and
Foreign Trade

15

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Cite this Code CFR
thus: 15 CFR 0.735-1

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....	as of January 1
Title 17 through Title 27.....	as of April 1
Title 28 through Title 41.....	as of July 1
Title 42 through Title 50.....	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, January 1, 1986), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

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Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a



date certain for expiration, an appropriate note will be inserted following the text.

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to take steps to reduce the Federal paperwork burden for individuals, small businesses and State and local governments, as well as to maximize the usefulness of information collection. One specific requirement of the Act is for Federal agencies to display an OMB control number with the information collection request.

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Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 (telephone 202-783-3238).

JOHN E. BYRNE,

Director,

Office of the Federal Register.

January 2, 1986.

THIS TITLE

Title 15—COMMERCE AND FOREIGN TRADE is composed of three volumes. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1986.

The first volume, containing Parts 0 to 299, includes the regulations issued by the Office of the Secretary of Commerce, the Bureau of the Census, and the National Bureau of Standards. The second volume, containing Parts 300 to 399, includes the regulations of the International Trade Administration. The third volume, containing Part 400 to end, includes the remaining regulations codified under this title of the CFR relating to commerce and foreign trade, foreign trade agreements, and telecommunications.

For this volume Beverly Fayson was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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Title 15—Commerce and Foreign Trade

(This book contains Parts 0 to 299)

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Group	Category	Value
Group A	Category 1	12.5
	Category 2	15.2
	Category 3	18.7
Group B	Category 1	10.1
	Category 2	13.4
	Category 3	16.8
Group C	Category 1	9.8
	Category 2	12.9
	Category 3	15.6

The data indicates that Group A has the highest values across all categories, followed by Group B and then Group C. The values for Category 3 are consistently higher than those for Category 1 and Category 2 within each group.

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**APPENDIX C—POSITION CATEGORIES BELOW
GS-13 REQUIRING STATEMENTS OF EM-
PLOYMENT AND FINANCIAL INTERESTS BY
INCUMBENTS**

AUTHORITY: E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR, 1965 Supp.; 5 CFR 735.104, unless otherwise noted.

SOURCE: 32 FR 15222, Nov. 2, 1967, unless otherwise noted.

Subpart A—General Provisions

§ 0.735-1 Purpose.

The purpose of this part is to set forth Department of Commerce policy and procedure relating to employee responsibilities and conduct.

§ 0.735-2

§ 0.735-2 Relation to basic provisions.

(a) This part implements the following:

(1) The provisions of law cited in this part;

(2) Executive Order 11222 of May 8, 1965 (3 CFR, 1965 Supp. p. 130);

(3) Part 735 of the Civil Service regulations (5 CFR 735.101-735.412, inclusive).

(b) This part prescribes additional standards of ethical and other conduct and reporting requirements deemed appropriate in the light of the particular functions and activities of this Department.

§ 0.735-3 Applicability.

This part applies to all persons included within the term "employee" as defined in § 0.735-4, except as otherwise provided in this part.

§ 0.735-4 Definitions.

For purposes of this part, except as otherwise indicated in this part:

(a) "Employee": (1) Shall include: (i) Every officer and employee of the Department of Commerce (regardless of location), including commissioned officers of the Environmental Science Services Administration; and

(ii) Every other person who is retained, designated, appointed, or employed by a Federal officer or employee, who is engaged in the performance of a function of the Department under authority of law or an Executive act, and who is subject to the supervision of a Federal officer or employee while engaged in the performance of the duties of his position not only as to what he does but also as to how he performs his duties, regardless of whether the relationship to the Department is created by assignment, detail, contract, agreement or otherwise.

(2) Shall not include: (i) Members of the Executive Reserve except when they are serving as employees of the Department under the circumstances described in paragraph (a)(1) of this section;

(ii) Members of crews of vessels owned or chartered to the Government and operated by or for the Maritime Administration under a General Agency Agreement; or

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(iii) Any other person who is determined legally not to be an officer or employee of the United States.

(b) "Special Government employee" shall mean an employee as defined in paragraph (a) of this section who is retained, designated, appointed, or employed to perform with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties on either a full-time or intermittent basis.

(c) "Personnel officer" means a personnel official to whom the power of appointment is redelegated under Administrative Order 202-250.

(d) "Operating unit" means, for purposes of this part, primary and constituent operating units designated as such in the Department Order Series of the Department of Commerce and, in addition, the Office of the Secretary.

(e) "Head of an operating unit," for the purposes of this part, includes the Assistant Secretary for Administration with respect to the performance of functions under this part for the Office of the Secretary.

Subpart B—General Policy

§ 0.735-5 General principles.

Apart from statute, there are certain principles of fair dealing which have the force of law and which are applicable to all officers of the Government. A public office is a public trust. No public officer can lawfully engage in business activities which are incompatible with the duties of his office. He cannot, in his private or official character, enter into engagements in which he has, or can have, a conflicting personal interest. He cannot allow his public duties to be neglected by reason of attention to his private affairs. Such conflicts of interest are not tolerated in the case of any private fiduciary, and they are doubly proscribed for a public trustee. (40 Ops. Atty. Gen. 187, 190.)

§ 0.735-6 Standards required in the Federal service.

5 CFR 735.101 states: "The maintenance of unusually high standards of honesty, integrity, impartiality, and

conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government."

§ 0.735-7 Special requirements of the Department.

The close and sensitive relationship between the Department of Commerce and the Nation's business community calls for special vigilance on the part of all officers and employees to avoid even any appearance of impropriety. The regulations set forth in this part have been adopted in order to promote the efficiency of the service in the light of the particular ethical and administrative problems arising out of the work of the Department.

§ 0.735-8 Limitations on private activities and interests.

It is the policy of the Department to place as few limitations as possible on private activities or interests consistent with the public trust and the effective performance of the official business of the Department. There is no general statutory or regulatory limitation on the conduct of private activities for compensation by officers or employees of the Department, when the private activity is not connected with any interest of the Government. When the private activity does not touch upon some interest, it may be conducted if it falls outside applicable statutory limitations and regulatory limitations.

Subpart C—Statutory Limitations Upon Employee Conduct

§ 0.735-9 Employee responsibilities.

Each employee and special Government employee has a positive duty to acquaint himself with the numerous statutes relating to the ethical and other conduct of employees and special employees of the Department and of the Government Appendix A of this part contains a listing of the more important statutory provisions of general applicability. In case of doubt on any question of statutory application to fact situations that may arise, the em-

ployee should consult the text of the statutes, which will be made available to him by his organization unit, and he should also avail himself of the legal counseling provided by this part.

Subpart D—Regulatory Limitations Upon Employee Conduct

§ 0.735-10 Administrative extension of statutory limitations.

The provisions of the statutes identified in this part which relate to the ethical and other conduct of Federal employees are adopted and will be enforced as administrative regulations, violations of which may in appropriate cases be the basis for disciplinary action, including removal. The fact that a statute which may relate to employee conduct is not identified in this part does not mean that it may not be the basis for disciplinary action against an employee.

§ 0.735-10a Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

- (a) Using public office for private gain;
- (b) Giving preferential treatment to any person;
- (c) Impeding Government efficiency or economy;
- (d) Losing complete independence or impartiality;
- (e) Making a government decision outside official channels; or
- (f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 0.735-11 Gifts, entertainment, and favors.

(a) *General limitations.* Except as provided in paragraphs (b) and (f) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, payment of expenses, fee, compensation, or any other thing of monetary value, for himself or another person, from a person who:

- (1) Has, or is seeking to obtain, contractual or other business or financial

relations with the Department of Commerce;

(2) Conducts operations or activities that are regulated by the Department of Commerce; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty or by actions of the Department.

(b) *Exceptions.* The following exceptions are authorized to the limitation in paragraph (a) of this section:

(1) Acceptance of a gift, gratuity, favor, entertainment, loan, payment of expenses, fee, compensation, or other thing of monetary value incident to obvious family or personal relationships (such as those between the employee and the parents, children, or spouse of the employee) when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors.

(2) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance. For the purpose of this section, "nominal value" means that the value of the food or refreshments shall not be unreasonably high under the circumstances.

(3) Acceptance of loans from banks or other financial institutions on customary terms and on security not inconsistent with paragraph (a) of this section, to finance proper and usual activities of employees, such as home mortgage loans.

(4) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(5) Acceptance of a gift, gratuity, favor, entertainment, loan, payment of expenses, fee, compensation, or other thing of monetary value when such acceptance is determined by the head of the operating unit concerned to be necessary and appropriate in view of the work of the Department and the duties and responsibilities of the employee. A copy of each such determination shall be sent to the counselor of the Department.

(6) Special Government employees are covered by this section only while employed by the Department or in connection with such employment.

(c) [Reserved]

(d) *Gifts to superiors.* An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement. An employee who violates these requirements shall be removed from the service.

(e) *Gifts from a foreign government.* An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless acceptance is (1) authorized by Congress as provided by the Constitution and in Pub. L. 89-673, 80 Stat. 952, and (2) authorized by the Department of Commerce as provided in Administrative Order 202-739.

(f) *Reimbursement for travel expenses and subsistence.* Neither this section nor § 0.735-12 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967. (Requirements applicable to Department of Commerce employees are set forth in Department of Commerce Administrative Order 203-9.)

§ 0.735-12 Outside employment or other activity.

(a) *Incompatible outside employment or other outside activity.* An employee shall not engage in outside employment or other outside activity not compatible (1) with the full and proper discharge of the duties and responsibilities of his Government employment, (2) with the policies or interests of the Department, or (3) with the maintenance of the highest standards of ethical and moral conduct. Incompatible activities include but are not limited to:

(i) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, a conflict of interest;

(ii) Outside employment which tends to impair the employee's mental or physical capacity to perform his Government duties and responsibilities in an acceptable manner;

(iii) Employment with any foreign government, corporation, partnership, instrumentality, or individual unless authorized by the Department;

(iv) Employment by, or service rendered under contract with, any of the persons listed in § 0.735-11(a);

(v) Receipt by an employee, other than a special Government employee, of any salary or anything of monetary value from a private source as compensation for his services to the Government. (18 U.S.C. 209).

(b) *Improper benefit from official activity.* (1) No employee of the Department shall receive compensation (e.g., an honorarium) or anything of monetary value, other than that to which he is duly entitled from the Government, for the performance of any activity during his service as such employee of the Department and within the scope of his official responsibilities.

(2) As used in this paragraph, "within the scope of his official responsibilities" means in the course of or in connection with his official responsibilities. (See 29 Comp. Gen. 163; 30 id. 246; 32 id. 454; 35 id. 354; B-131371, July 17, 1957.)

(3) An activity shall ordinarily be considered to be in the course of or in

connection with an employee's official responsibilities if it is performed as a result of an invitation or request which is addressed to the Department or a component thereof, or which is addressed to an employee at his office at the Department, or which there is reason to believe is extended partly because of the official position of the employee concerned. (When in doubt, it may be asked whether it is likely that the invitation would have been received if the recipient were not associated with the Department.) Whether an employee is on leave while performing an activity shall be considered irrelevant in determining whether an activity is performed in the course of or in connection with the employee's official responsibilities.

(4) Acceptance of a gift or bequest on behalf of the Department shall be made in accordance with Department Order 3 and Administrative Order 203-9.

(c) *Teaching, lecturing, and writing.* Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law. Executive Order 11222, 5 CFR Part 735, or the regulations in this part and Administrative Order 201-4, "Writing for Outside Publication," subject to the following conditions:

(1) An employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or the Board of Examiners for the Foreign Service, that depends on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the Assistant Secretary for Administration or his designee gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(2) No employee shall receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities,

§ 0.735-13

programs, or operations of the Department of Commerce, or which draws substantially on official data or ideas which have not become part of the body of public information. As used in this paragraph, "the body of public information" shall mean information which has been disseminated widely among segments of the public which may be affected by or interested in the information concerned, or which is known by such segments of the public to be freely available on request to a Government agency.

(d) [Reserved]

(e) *Application of the limitations.* This section does not preclude an employee from:

(1) [Reserved]

(2) Participation in the activities of National or State political parties not proscribed by law.

(3) Participation in the affairs of, or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

[32 FR 15222, Nov. 2, 1967, as amended at 33 FR 9765, July 6, 1968]

§ 0.735-13 Financial interests.

(a) An employee shall not: (1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his Government employment.

(b) No employee shall participate in any manner, on behalf of the United States, in the negotiation of contracts, the making of loans, and grants, the granting of subsidies, the fixing of rates, or the issuance of valuable permits or certificates, or in any investigation or prosecution, or in the transaction of any other official business, which affects chiefly a person with whom he has any economic interest or any pending negotiations concerning a prospective economic interest, except with express prior authorization as provided for in Subpart G of this part.

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(c) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, Executive order, Civil Service regulations (5 CFR Part 735), or regulations in this part.

(d) The financial (or economic) interests described below are too remote or too inconsequential to affect the integrity of an employee's services in any matter involving them, and are thereby exempted from the prohibitions of 18 U.S.C. 208(a), and do not exclude such employee's participation in the transaction of any official business involving such financial or economic interests:

Deposits in a bank, savings and loan association, building association, credit union or similar financial institution; policies held with an insurance company; constructive interests in companies and other entities owned or held by a mutual fund or other diversified investment company in which the employee has an interest.

These exempted financial (or economic) interests need not be reported by employees in their statements of employment and financial interests referred to in § 0.735-21.

(18 U.S.C. 208(b); 5 CFR 735.404a)

[32 FR 15222, Nov. 2, 1967, as amended at 41 FR 34939, Aug. 18, 1976; 47 FR 3350, Jan. 25, 1982]

§ 0.735-14 Use of Government time or property.

(a) An employee shall not directly or indirectly use, or allow the use of, Government time or property of any kind, including property leased to the Government, for other than officially approved activities.

(b) Each employee shall protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him.

§ 0.735-15 Misuse of employment or information.

(a) *Use of Government employment.* An employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private

gain for himself or another person, particularly one with whom he has family, business, or financial ties.

(b) *Use of inside information.* For the purpose of furthering a private interest, an employee shall not, except as provided in § 0.735-12(c), directly or indirectly use, or allow the use of, information which has been or has the appearance of having been obtained through or in connection with his Government employment and which has not been made available to the general public.

(c) *Coercion.* An employee shall not use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

(d) *Disclosure of restricted information.* No employee shall divulge restricted commercial or economic information, or restricted information concerning the personnel or operations of any Government agency, or release any such information in advance of the time prescribed for its authorized release.

(e) *Discrimination.* No employee, acting in his official capacity, shall, directly or indirectly, authorize, permit, or participate in any act or course of conduct which, on the ground of race, color, creed, national origin, or sex, excludes from participation, denies any benefit to, or otherwise subjects to discrimination any person under any program or activity administered or conducted by the Department or one of its units, or such employee. (See Department Order 195.)

§ 0.735-16 Indebtedness.

(a) An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For purposes of this section, "a just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which, in the view of the Department, does not, under the circumstances, reflect adversely on the Government as his employer.

(b) In the event of dispute between an employee and an alleged creditor, this section does not require the Department to determine the validity or amount of the disputed debt.

§ 0.735-17 Gambling, betting, and lotteries.

An employee shall not participate while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities (a) necessitated by an employee's law enforcement duties, or (b) under section 3 of Executive Order 10927 (relating to solicitations conducted by organizations composed of civilian employees or members of the armed forces among their own members for organizational support or for benefit or welfare funds for their own members) and similar agency-approved activities.

§ 0.735-18 General conduct prejudicial to the Government.

(a) *General policy.* Officers and employees of the Federal Government are servants of the people. Because of this, their conduct must, in many instances, be subject to more restrictions and to higher standards than may be the case in certain private employments. They are expected to conduct themselves in a manner which will reflect favorably upon their employer. Although the Government is not particularly interested in the private lives of its employees, it does expect them to be honest, reliable, trustworthy, and of good character and reputation. They are expected to be loyal to the Government, and to the department or agency in which they are employed.

(b) *Specific policy.* An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

(c) *Regulations applicable to public buildings and grounds.* Each employee is responsible for knowing and complying with regulations of the General

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Services Administration and of the Department of Commerce applicable to public buildings and grounds.

§ 0.735-19 Reporting undue influence to superiors.

Each employee shall report to his superior any instance in which another person inside or outside the Federal Government uses or attempts to use undue influence to induce, by reason of his official Government position, former Government employment, family relationship, political position, or otherwise, the employee to do or omit to do any official act in derogation of his official duty.

Subpart E—Statements of Employment and Financial Interests

§ 0.735-20 General provisions.

(a) In order to carry out the purpose of this part, certain employees of the Department, specified in or pursuant to this part, will be required to submit statements of outside employment and financial interests for review designed to disclose conflicts of interest, apparent conflicts of interest on the part of employees, and other matters within the purview of this part.

(b) When a conflict or apparent conflict of interest on the part of an employee or other question of compliance with the provisions of this part arises and is not resolved at a lower level within the Department, e.g., by appropriate remedial action, the information concerning the matter shall be reported to the Secretary through the counselor for the Department designated in § 0.735-38.

(c) In the event of a conflict or apparent conflict of interest on the part of an employee or other question of compliance with the provisions of this part, the employee concerned shall be provided an opportunity to explain the matter. After consideration of the conflict or apparent conflict of interest or other question of compliance, and the employee's explanation thereof, appropriate action shall be taken.

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§ 0.735-21 Form and content of statements.

(a) Statements of employment and financial interests shall be submitted as far as practicable on one of the following forms, as appropriate:

(1) Form CD-220, "Confidential Statement of Employment and Financial Interests (For Use by Government Employees Other Than Special Government Employees)"; or

(2) Form CD-219, "Confidential Statement of Employment and Financial Interests (For Use by Special Government Employees)."

(b) Each of the foregoing forms shall contain, as a minimum, the information required by the formats prescribed by the Civil Service Commission in the Federal Personnel Manual. Questions on a statement of employment and financial interests that go beyond, or are in greater detail than, those included on the Commission's formats may be included on a statement only with the approval of the Assistant Secretary for Administration and the Commission.

(c) [Reserved]

(d) The employee will not be required to reveal precise amounts of financial interest when such information is not necessary for a proper determination as to whether there is any apparent conflict of interest.

§ 0.735-22 Employees required to submit statements.

Except as provided in § 0.735-23, a statement of employment and financial interests shall be submitted by the following employees other than special Government employees:

(a) Employees paid at a level of the Executive Schedule in Subchapter II of Chapter 53 of Title 5, United States Code.

(b) Employees classified at GS-13 or above under section 5332 of Title 5, United States Code, or at a comparable pay level under another authority, who are in positions the basic duties and responsibilities of which are determined by the head of the operating unit concerned to require the incumbent to make a Government decision or to take a Government action in regard to:

- (1) Contracting or procurement;
- (2) Administering or monitoring grants or subsidies;
- (3) Regulating or auditing private or other non-Federal enterprise; or
- (4) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise.

Each employee who occupies a position in one of the above-listed categories and who is not excluded from the reporting requirement shall be notified that he is subject to the reporting requirement.

(c) The following employees classified at GS-13 or above under section 5332 of Title 5, United States Code, or at a comparable pay level under another authority, not otherwise subject to paragraph (b) of this section:

(1) Employees in grade GS-16 or above, or in comparable or higher positions.

(2) Employees in Schedule C positions.

(3) Employees in hearing examiner or hearing officer positions.

(4) Persons employed as experts, consultants, or advisers.

(5) Employees in positions or categories of positions, regardless of their official title, identified in Appendix B of this part.

(d) Employees classified below GS-13 under section 5332 of Title 5, United States Code, or at a comparable pay level under another authority, who are in positions or categories of positions, regardless of their official title, identified in Appendix C to this part.

(e) *Appendices B and C.* (1) Appendix B to this part shall be maintained and changes made therein in accordance with the criteria in 5 CFR 735.403(c) and in accordance with the procedure in this paragraph. Appendix C to this part shall be maintained and changes made therein in accordance with the criteria in 5 CFR 735.403(d) and in accordance with the procedure in this paragraph.

(2) Heads of operating units and heads of offices in the Office of the Secretary shall, in conformity with the above-cited criteria, recommend changes in Appendix B and Appendix C to the Assistant Secretary for Ad-

ministration for approval. Changes in Appendix C shall be submitted, with specific justification, to the Civil Service Commission for further prior approval.

(3) Incumbents of positions added to Appendix B or to Appendix C shall become subject to the reporting requirements of this part upon receipt of notification that their position is subject to such requirements. Appendix B and Appendix C shall be republished annually to reflect changes in the lists.

§ 0.735-22a Employee's complaint on filing requirement.

An employee shall have an opportunity for review through the Department of Commerce grievance procedure, as provided by Administrative Order 202-770, of a complaint by him that his position has been improperly included under the regulations of the Department as one requiring the submission of a statement of employment and financial interests.

§ 0.735-23 Employees not required to submit statements.

(a) Employees in positions that meet the criteria in paragraph (b), (c), or (d) of § 0.735-22 may be excluded from the reporting requirement when the head of the operating unit concerned determines that:

(1) The duties of a position are such that the likelihood of the incumbent's involvement in a conflicts-of-interest situation is remote; or

(2) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

(b) A statement of employment and financial interests is not required by this part from the Secretary of Commerce, from the head of an independent agency for which the Department of Commerce performs administrative services, or from a full-time member of a committee, board, or commission appointed by the President. These employees are subject to separate report-

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ing requirements under section 401 of Executive Order 11222.

§ 0.735-24 Time and place for submission of original statements.

(a) An employee required to submit a statement of employment and financial interests under this part shall submit that statement not later than:

(1) Ninety days after the effective date of this part if the employee is employed by the Department on or before the effective date of this part; or

(2) Thirty days after the employee's entrance on duty date, but in no case earlier than 90 days after the effective date of this part.

(b) Statements shall be submitted to a personnel officer specified by the head of the operating unit or to such other person as the head of the operating unit, with the approval of the Secretary, may specify. Secretarial officers and heads of operating units shall submit their statements to the Secretary or to such person as the Secretary may designate.

§ 0.735-25 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year, except when the Civil Service Commission authorizes a different date on a showing by the Department of necessity therefor. (The Commission has authorized filing of the supplementary statement for 1967 as of September 30, 1967.) If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of Title 18, United States Code, or Subpart D of this part.

§ 0.735-26 Interests of employees' relatives.

The interest of a spouse, minor child, or other member of an employee's immediate household is consid-

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ered to be an interest of the employee. For the purpose of this section, "member of an employee's immediate household" means those blood relations who are members of the employee's household.

§ 0.735-27 Information not known by employees.

If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

§ 0.735-28 Information not required.

This part does not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 0.735-29 Confidentiality of employees' statements.

(a) No employee may have access to a statement of employment and financial interests, or a supplementary statement, unless his official duties make access necessary. Each employee who has access to such a statement is responsible for maintaining it in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to an employee of the Department of Commerce or the Civil Service Commission to carry out the purpose of this part or to other persons as the Civil Service Commission or the Assistant Secretary

for Administration may determine for good cause shown. (The foregoing limitations do not apply to release of information by an employee with respect to a statement he has submitted under this section.)

(b) The employees designated in paragraph (b) of § 0.735-24 to receive statements are authorized to review and retain the statements and are responsible for maintaining the statements in confidence, as provided in this section.

§ 0.735-30 Relation of this part to other requirements.

(a) The requirement that employees submit statements of employment and financial interests and supplementary statements under this part is in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation.

(b) The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation, including this part.

§ 0.735-31 Special Government employees.

(a) Special Government employees shall be required to report:

- (1) All other employment; and
- (2) Financial interests specified on Form CD-219.

(b) A waiver may be granted to the requirements of this section in the case of a special Government employee who is not a consultant or expert (as defined in Chapter 304 of the Federal Personnel Manual) when a determination is made that the duties of the position held by that special Government employee are of such a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. Any such waiver shall be approved by the head of the operating unit concerned or his designee. A copy of the waiver shall be filed with the deputy counselor for the organization unit concerned.

(c) The original statement of employment and financial interests re-

quired to be submitted by a special Government employee shall be submitted not later than his entry on duty. Each special employee shall keep his statement current throughout his employment with the Department by the submission of supplementary statements.

Subpart F—Supplementary Regulations

§ 0.735-32 Departmental.

The Assistant Secretary for Administration may prescribe supplementary instructions consistent with this part.

§ 0.735-33 Operating units.

Each operating unit is hereby authorized and directed to prescribe, after approval by the Assistant Secretary for Administration, such additional regulations not inconsistent with this part as may be necessary to effectuate the general purpose of this part in the light of its individual operating requirements, including but not limited to pertinent statutory provisions, such as:

- (a) 35 U.S.C. 4, 122 (Patent Office);
- (b) 46 U.S.C. 1111(b) (Maritime Administration);

(c) Certain provisions of the Defense Production Act of 1950, e.g., 50 U.S.C. App. 2160(b)(2) (avoidance of conflicts of interest), 50 U.S.C. App. 2160(b)(6) (financial statements), and 50 U.S.C. App. 2160(f) (prohibition of use of confidential information for purposes of speculation) (Business and Defense Services Administration and any other primary operating unit affected); and

(d) Certain provisions of Pub. L. 89-136, the Public Works and Economic Development Act of 1965, e.g., section 711 (restriction on employing certain EDA employees by applicants for financial assistance), and section 710(b) (embezzlement), false book entries, sharing in loans, etc., and giving out unauthorized information for speculation).

§ 0.735-34 Effective date of supplementary regulations.

Supplementary regulations prescribed pursuant to § 0.735-33, shall become effective upon approval by the

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issuing officer unless a different date is required by law or a later date is specified therein.

Subpart G—Administration

§ 0.735-35 Responsibilities of employees.

It is the responsibility of each employee:

(a) To assure, at the outset of his employment, that each of his interests and activities is consistent with the requirements established by or pursuant to this part;

(b) To submit a statement of employment and financial interests at such times and in such form as may be specified in or pursuant to this part;

(c) To certify, upon entering on duty in the Department, that he has read this part and applicable regulations supplementary thereto;

(d) To obtain prior written authorization of any interest or activity about the propriety of which any doubt exists in the employee's mind, as provided in § 0.735-39;

(e) To confine each of his interests and activities at all times within the requirements established by or pursuant to this part, including any authorizations granted pursuant to this part; and

(f) To obtain a further written authorization whenever circumstances change, or the nature or extent of the interest or activity changes, in such a manner as to involve the possibility of a violation or appearance of a violation of a limitation or requirement prescribed in or pursuant to this part.

§ 0.735-36 Responsibilities of operating units.

The head of each operating unit, or his designee, shall:

(a) Furnish or make available to each employee a copy of this part (or a comprehensive summary thereof) within 90 days after approval of this part by the Civil Service Commission, and, upon their issuance, a copy of any regulations supplementary thereto (or a comprehensive summary thereof);

(b) Furnish or make available to each new employee at the time of his entrance on duty a copy of this part as it may be amended and any supplementary regulations (or a comprehensive summary thereof);

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mentary regulations (or a comprehensive summary thereof);

(c) Bring this part (or as it may be amended and any supplementary regulations thereto) to the attention of each employee annually, and at such other times as circumstances may warrant as may be determined by the Assistant Secretary for Administration;

(d) Have available for review by employees, as appropriate, copies of laws, Executive orders, this part, supplementary regulations, and pertinent Civil Service Commission regulations and instructions relating to ethical and other conduct of Government employees;

(e) Advise each employee who is a special Government employee of his status for purposes of 18 U.S.C. 203 and 205;

(f) Require each employee specified in § 0.735-22 to submit a statement of employment and financial interests, as provided by or pursuant to this part;

(g) Develop an appropriate form, with the approval of the counselor of the Department, on which the employee may certify that he has read this part and applicable regulations supplementary thereto, in accordance with § 0.735-35(c), and on which he may, if he so desires, indicate that he has a private activity or interest about which he requests advice and guidance as provided by § 0.735-38.

(h) Require each employee upon entering on duty and at such other times as may be specified, to execute the certification required by § 0.735-35(c);

(i) Report to the program Secretarial Officer concerned and to the Assistant Secretary for Administration promptly any instance in which an employee, after notice, fails to submit the certification required under § 0.735-35(c) or a statement of employment or financial interests required under this part within 14 calendar days following the prescribed time limit for doing so; and

(j) Take action to impress upon each employee required to submit a statement of employment and financial interests, upon his supervisor, and upon employees with whom the employee works, their responsibility as follows:

(1) The employee's supervisor is responsible (i) for excluding from the

range of duties of the employee any contracts or other transactions between the Government and his outside employer, clients, or entities in which he has an interest within the purview of this part, and (ii) for overseeing the employee's activities in order to insure that the public interest is protected from improper conduct on his part and that he will not, through ignorance or inadvertence, embarrass the Government or himself.

(2) The employee's supervisor and employees with whom he works are responsible for avoiding the use of the employee's services in any situation in which a violation of law, regulation, or ethical standards is likely to occur or to appear to occur.

(3) The supervisor of an employee is responsible for initiating prompt and proper disciplinary or remedial action when a violation, intentional or innocent, is detected.

(4) Employees shall avoid divulging to a special Government employee privileged Government information which is not necessary to the performance of his governmental responsibility or information which directly involves the financial interests of his non-Government employer.

(5) An employee shall make every effort in his private work to avoid any personal contact with respect to negotiations with the Department for contracts, grants, or loans, if the subject matter is related to the subject matter of his Government employment. When this is not possible, he may participate if not otherwise prohibited by law (e.g., 18 U.S.C. 203 and 205) in the negotiations for his private employer only with the prior approval of the head of the operating unit concerned.

§ 0.735-37 Procedure.

The review of statements of employment and financial interests shall include the following basic measures, among others:

(a) Statements shall be submitted to the designated officer, who will review each employee's statement of employment and financial interests to ascertain whether they are consistent with the requirements established by or pursuant to this part. (See § 0.735-24(b).)

(b) Where the statement raises any question of compliance with the requirements of this part, it shall be submitted to a deputy counselor for the organization unit concerned. The deputy counselor may, in his discretion, utilize the advice and services of others (including departmental facilities) to obtain further information needed to resolve the questions.

(c) The designated officer shall maintain the statements of employment and financial interests in a file apart from the official personnel files and shall take every measure practicable to insure their confidentiality. Statements of employment and financial interests shall be preserved for 5 years following the separation of an employee from the Department or following termination of any other relationship under which the individual rendered service to the Department, except as may be otherwise authorized by the Assistant Secretary for Administration or as required by law.

§ 0.735-38 Availability for counseling.

(a) The General Counsel of the Department shall:

(1) Serve as the counselor for the Department of Commerce with respect to matters covered by the basic provisions cited in § 0.735-2(a) and otherwise by or pursuant to this part;

(2) Serve as the Department of Commerce designee to the Civil Service Commission on matters covered by this part; and

(3) Coordinate the counseling services provided under this part and assure that counseling and interpretations on questions of conflicts of interest and other matters covered by this part are available to deputy counselors designated under paragraph (b) of this section.

(b) The counselor shall designate employees who shall serve as deputy counselors for employees of the Department of Commerce with respect to matters covered by or pursuant to this part and shall give authoritative advice and guidance to each employee who seeks advice and guidance on questions of conflict of interests and other matters covered by or pursuant to this part.

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(c) Each operating unit shall notify its employees of the availability of counseling services and of how and where these services are available. This notification shall be given within 90 days after approval of this part by the Civil Service Commission and periodically thereafter. In the case of a new employee appointed after the foregoing notification, notification shall be made at the time of his entrance on duty.

(d) In each operating unit a deputy counselor shall advise and counsel each employee concerning any adjustments necessary in his financial interests or activities, or in any contemplated interests or activities, in order to meet the requirements established by or pursuant to this part.

§ 0.735-39 Authorizations.

All requests for authorizations required under this part shall be addressed to the head of the operating unit concerned. In the Office of the Secretary such requests shall be addressed to the Secretary or such person as he may designate. When granted, authorizations will be in writing, and a copy of each authorization will be filed in the employees' official personnel file.

(a) In case of doubt, or upon the request of the employee concerned, cases or questions will be forwarded to the counselor or a deputy counselor. (See § 0.735-38.)

(b) Where an activity requested to be authorized can be conducted as official business, it shall not be authorized as a private activity, but shall be conducted as official business.

(c) Where authorizations involve speaking, writing, or teaching, use of the official title of the employee for identification purposes may be authorized, provided the employee makes it clear that his statements and actions are not of an official nature.

(d) If an authorization has been granted for a specific activity or interest, and the activity or interest is subsequently deemed to constitute a violation of the limitations or requirements prescribed in or pursuant to this part, the employee concerned shall be notified in writing of the cancellation of the authorization and shall modify or

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stop the activity or interest involved, as requested.

§ 0.735-40 Disciplinary and other remedial action.

(a) Violation of a requirement established in or pursuant to this part shall be cause for appropriate disciplinary action, which may be in addition to any penalty prescribed by law.

(b) When, after consideration of the explanation of the employee provided by § 0.735-20(c), the reviewing officer, in cooperation with the responsible supervisory official, decides that remedial action is required, he will take or cause to be taken immediate action to end the conflict or appearance of conflict of interest. Remedial action may include, but is not limited to:

- (1) Changes in assigned duties;
- (2) Divestment by the employee of his conflicting interest;
- (3) Disciplinary action (including removal from the service); or
- (4) Disqualification for a particular assignment.

Remedial action, whether disciplinary or otherwise, shall be effected in accordance with applicable laws, Executive orders, and regulations.

(c) No disciplinary or remedial action may be taken under this section against an employee of another Federal department or agency on detail to the Department of Commerce other than through and with the concurrence of the detailed employee's employing agency.

§ 0.735-41 Inquiries and exceptions.

(a) Inquiries relating to legal aspects of the limitations set forth in or cited in or pursuant to this part should be submitted to the appropriate deputy counselor. Inquiries relating to other aspects of this part or regulations supplementary thereto should be referred to the appropriate personnel office.

(b) Within the limits of administrative discretion permitted to the Department, exceptions to the requirements of this part may be granted from time to time in unusual cases by the head of the operating unit, whenever the facts indicate that such an exception would promote the efficiency of the service. Each request for

such an exception should be submitted in writing to the head of the operating unit concerned, and shall contain a full statement of the justification for the request. Reports concerning such requests, if approved, shall be forwarded to the program Secretarial Officer concerned and to the Assistant Secretary for Administration by the head of the operating unit concerned.

Subpart H—Disciplinary Actions Concerning Post-Employment Conflict of Interest Violations

AUTHORITY: 18 U.S.C. 207(j); 5 CFR 737.27.

SOURCE: 49 FR 32057, Aug. 10, 1984; 50 FR 928, Jan. 8, 1985, unless otherwise noted.

§ 0.735-42 Scope.

(a) These regulations establish procedures for imposing sanctions against a former employee for violating the post-employment restrictions of the conflict of interest laws and regulations set forth in 18 U.S.C. 207 and 5 CFR Part 737. These procedures are established pursuant to the requirement in 18 U.S.C. 207(j). The General Counsel is responsible for resolving questions on the legal interpretation of 18 U.S.C. 207 or regulations issued thereunder and for advising employees on these provisions.

(b) For purposes of this subpart, (1) "Former employee" means a former Government employee as defined in 5 CFR 737.3(a)(4) who had served in the Department;

(2) "Lesser included sanctions" means sanctions of the same type but more limited scope as the proposed sanction; thus a bar on communication with an operating unit is a lesser included sanction of a proposed bar on communication with the Department and a bar on communication for one year is a lesser included sanction of a proposed five year bar;

(3) "Assistant Secretary" means the Assistant Secretary for Administration or designee;

(4) "Director" means the Director for Personnel and Civil Rights, Office of the Secretary, or designee;

(5) "Inspector General" and "General Counsel" include any persons designated by them to perform their functions under this subpart; and

(6) "Days" means calendar days except that a dead-line which falls on a weekend or holiday shall be extended to the next working day.

§ 0.735-43 Report of violations and investigation.

(a) If an employee has information which indicates that a former employee has violated any provisions of 18 U.S.C. 207 or regulations thereunder, that employee shall report such information to the Inspector General.

(b) Upon receiving information as set forth in paragraph (a) of this section from an employee or any other person, the Inspector General, upon a determination that it is nonfrivolous, shall expeditiously provide the information to the Director, Office of Government Ethics, and to the Criminal Division, Department of Justice. The Inspector General shall coordinate any investigation under this subpart with the Department of Justice, unless the Department of Justice informs the Inspector General that it does not intend to initiate criminal prosecution.

(c) All investigations under this subpart shall be conducted in such a way as to protect the privacy of former employees. To ensure this, to the extent reasonable and practical, any information received as a result of an investigation shall remain confidential except as necessary to carry out the purposes of this subpart, including the conduct of an investigation, hearing, or judicial proceeding arising thereunder, or as may be required to be released by law.

(d) The Inspector General shall report the findings of the investigation to the Director.

§ 0.735-44 Initiation of proceedings.

If the Director determines, after an investigation by the Inspector General, that there is reasonable cause to believe that a former employee has violated post-employment statutes or regulations, the Director shall initiate administrative proceedings under this subpart by proposing sanctions against the former employee and by providing notice to the former employee as set forth in § 0.735-45.

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§ 0.735-45 Notice.

(a) The Director shall notify the former employee of the proposed disciplinary action in writing by registered or certified mail, return receipt requested, or by any means which gives actual notice or is reasonably calculated to give actual notice. Notice shall be considered received if sent to the last known address of the former employee.

(b) The notice shall include: (1) A statement of allegations and the basis thereof sufficiently detailed to enable the former employee to prepare a defense;

(2) A statement that the former employee is entitled to a hearing if requested within 20 days from date of notice;

(3) An explanation of the method by which the former employee may request a hearing under this subpart including the name, address, and telephone number of the person to contact if there are further questions;

(4) A statement that the former employee has the right to submit documentary evidence to the Director if a hearing is not requested and an explanation of the method of submitting such evidence and the date by which it must be received; and

(5) A statement of the sanctions which have been proposed.

§ 0.735-46 Hearing.

(a) *Examiner.* (1) Upon timely receipt of a request for a hearing, the Director shall refer the matter to the Assistant Secretary who shall appoint an examiner to conduct the hearing and render an initial decision.

(2) The examiner shall be impartial, shall not be an individual who has participated in any manner in the decision to initiate the proceedings, and shall not have been employed under the immediate supervision of the former employee or have been employed under a common immediate supervisor. The examiner shall be admitted to practice law and have suitable experience and training to conduct the hearing, reach a determination and render an initial decision in an equitable manner.

(b) *Time, date, and place.* The hearing shall be conducted at a reasonable

time, date, and place as set by the examiner. In setting the date, the examiner shall give due regard to the need for both parties to adequately prepare for the hearing and the importance of expeditiously resolving allegations that may be damaging to the former employee's reputation.

(c) *Former employee's rights.* At a hearing, the former employee shall have the right:

(1) To represent himself or herself or to be represented by counsel,

(2) To introduce and examine witnesses and to submit physical evidence,

(3) To confront and cross-examine adverse witnesses,

(4) To present oral argument, and

(5) To receive a transcript or recording of the proceedings, on request.

(d) *Procedure and evidence.* In a hearing under this subpart, the Federal Rules of Evidence and Civil Procedure do not apply but the examiner shall exclude irrelevant or unduly repetitious evidence and all testimony shall be taken under oath or affirmation. The examiner may make such orders and determinations regarding the admissibility of evidence, conduct of examination and cross-examination, and similar matters which the examiner deems necessary or appropriate to ensure orderliness in the proceedings and fundamental fairness to the parties. There shall be no discovery unless agreed to by the parties and ordered by the examiner. The hearing shall not be open to the public unless the former employee or the former employee's representative waives the right to a closed hearing, in which case the examiner shall determine whether the hearing will be open to the public.

(e) *Ex-parte communications.* The former employee, the former employee's representative, and the agency representative shall not make any ex-parte communications to the examiner concerning the merits of the allegations against the former employee prior to the issuance of the initial decision.

(f) *Initial decision.* (1) The proposed sanctions shall be sustained in an initial decision upon a determination by the examiner that the preponderance

of the evidence indicated a violation of post-employment statutes or regulations.

(2) The examiner shall issue an initial decision which is based exclusively on the transcript of testimony and exhibits together with all papers and requests filed in connection with the proceeding and which sets forth all findings of fact and conclusions of law relevant to the matter at issue.

(3) The initial decision shall become final thirty days after issuance if there has been no appeal filed under § 0.735-48.

§ 0.735-47 Decision absent a hearing.

(a) If the former employee does not request a hearing in a timely manner, the Director shall make an initial decision on the basis of information compiled in the investigation, and any submissions made by the former employee.

(b) The proposed sanction or a lesser included sanction shall be imposed if the record indicates a violation of post-employment statutes or regulations by a preponderance of the evidence.

(c) The initial decision shall become final thirty days after issuance if there has been no appeal filed under § 0.735-48.

§ 0.735-48 Administrative appeal.

(a) Within 30 days after issuance of the initial decision, either party may appeal the initial decision or any portion thereof to the Assistant Secretary. The opposing party shall have 20 days to respond.

(b) If an appeal is filed, the Assistant Secretary shall issue a final decision which shall be based solely on the record, or portions thereof cited by the parties to limit issues, and the appeal and response. The Assistant Secretary shall also decide whether to impose the proposed sanction or a lesser included sanction.

(c) If the final decision modifies or reverses the initial decision, it shall state findings of fact and conclusions of law which differ from the initial decision.

§ 0.735-49 Sanctions.

(a) If there has been a final determination that the former employee has violated post-employment statutes or regulations, the Director shall impose, subject to the authority of the Assistant Secretary under § 0.735-48(b), the sanction which was proposed in the notice to the former employee or a lesser included sanction.

(b) Sanctions which may be imposed include: (1) Prohibiting the former employee from making, on behalf of any other person except the United States, any formal or informal appearance before or, with the intent to influence, any oral or written communication to the Department or any organizational sub-unit thereof on any matter of business for a period not to exceed five years; and

(2) Other appropriate disciplinary action.

(c) The Director may enforce the sanctions of paragraph (b)(1) of this section by directing any or all employees to refuse to participate in any such appearance or to accept any such communication. As a method of enforcement, the Director may establish a list of former employees against whom sanctions have been imposed.

§ 0.735-50 Judicial review.

Any former employee found to have violated 18 U.S.C. 207, or regulations issued thereunder, by a final administrative decision under this subpart may seek judicial review of the administrative determination.

APPENDIX A—STATUTES GOVERNING CONDUCT OF FEDERAL EMPLOYEES

There are numerous statutes pertaining to the ethical and other conduct of Federal employees, far too many to attempt to list them all. Consequently, only the more important ones of general applicability are referred to in this appendix.

A. BRIBERY AND GRAFT

.01 Title 18, U.S.C., section 201, prohibits anyone from bribing or attempting to bribe a public official by corruptly giving, offering, or promising him or any person selected by him, anything of value with intent (a) to influence any official act by him, (b) to influence him to commit or allow any fraud

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on the United States, or (c) to induce him to do or omit to do any act in violation of his lawful duty. As used in section 201, "Public officials" is broadly defined to include officers, employees, and other persons carrying on activities for or on behalf of the Government.

.02 Section 201 also prohibits a public official's solicitation or acceptance of, or agreement to take, a bribe. In addition, it forbids offers or payments to, and solicitations or receipt by, a public official of anything of value "for or because of" any official act performed or to be performed by him.

.03 Section 201 further prohibits the offering to or the acceptance by a witness of anything of value involving intent to influence his testimony at a trial, Congressional hearing, or agency proceeding. A similar provision applies to witnesses "for or because of" testimony given or to be given. The provisions summarized in this section do not preclude lawful witness fees, travel and subsistence expenses, or reasonable compensation for expert testimony.

B. COMPENSATION TO OFFICERS AND EMPLOYEES IN MATTERS AFFECTING THE GOVERNMENT

.01 Title 18, U.S.C., section 203, prohibits an officer or employee from receiving compensation for services rendered for others before a Federal department or agency in matters in which the Government is a party or is interested.

.02 Section 203 applies to a special Government employee as follows:

a. If the special Government employee has served in the Department of Commerce more than 60 days during the preceding period of 365 days, section 203 applies to him only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially in his governmental capacity, or (2) which is pending in the Department of Commerce; or

b. If the special Government employee has served in the Department no more than 60 days during the preceding period of 365 days, section 203 applies to him only in relation to a particular matter involving a specific party or parties in which he has at any time participated personally and substantially in his governmental capacity.

.03 Section 203 does not apply to a retired officer of the uniformed services while not on active duty and not otherwise an officer or employee of the United States.

C. ACTIVITIES OF OFFICERS AND EMPLOYEES IN CLAIMS AGAINST AND OTHER MATTERS AFFECTING THE GOVERNMENT

.01 Title 18, U.S.C., section 205, prohibits an officer or employee, otherwise than in the performance of his official duties, from:

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a. Acting as agent or attorney for prosecuting any claim against the United States, or receiving any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claims; or

b. Acting as agent or attorney for anyone before any Government agency, court, or officer in connection with any matter in which the United States is a party or has a direct and substantial interest.

.02 Section 205 applies to a special Government employee as follows:

a. If the special Government employee has served in the Department more than 60 days during the preceding period of 365 days, section 205 applies to him only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially in his governmental capacity, or (2) which is pending in the Department of Commerce; or

b. If the special Government employee has served in the Department no more than 60 days during the preceding period of 365 days, section 205 applies to him only in relation to a particular matter involving a specific party or parties in which he has at any time participated personally and substantially in his governmental capacity.

.03 Section 205 does not preclude:

a. An employee, if not inconsistent with faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings, in connection with those proceedings; or

b. An employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

.04 Sections 203 and 205 do not preclude:

a. An employee from acting as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters in which he has participated personally and substantially as a Government employee or which are the subject of his official responsibility, provided the head of the operating unit concerned approves; or

b. A special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with, or for the benefit of, the United States, provided the head of the operating unit concerned, with the approval of the appropriate program Secretarial Officer, shall certify in writing that the national interest so requires, and such certification shall be published in the FEDERAL REGISTER.

.05 Section 205 does not apply to a retired officer of the uniformed services while not on active duty and not otherwise an officer or employee of the United States.

D. DISQUALIFICATION OF FORMER OFFICERS AND EMPLOYEES IN MATTERS CONNECTED WITH FORMER DUTIES OR OFFICIAL RESPONSIBILITIES; DISQUALIFICATION OF PARTNERS

.01 Title 18 U.S.C., section 207:

a. Provides that a former Government officer or employee, including a former special Government employee, shall be permanently barred from acting as agent or attorney for anyone other than the United States in any matter in which the United States is a party or is interested and in which he participated personally and substantially in a governmental capacity;

b. Bars a former Government officer or employee, including a special Government employee, of an agency, for a period of 1 year after his employment with it has ceased, from appearing personally as agent or attorney for another person before any court or agency in connection with a matter in which the Government has an interest and which was under his official responsibility at the employing agency (e.g., Department of Commerce) at any time within 1 year prior to the end of such responsibility; and

c. Prohibits a partner of a person employed by the Government, including a special Government employee, from acting as agent or attorney for anyone other than the United States in matters in which the employee participates or has participated personally and substantially for the Government or which are the subject of his official responsibility.

.02 Subparagraphs .01a. and .01b. of this section do not prevent a former officer or employee or special Government employee who has outstanding scientific or technical qualifications from acting as attorney or agent or appearing personally before the Department of Commerce in connection with a particular matter in a scientific or technological field if the Assistant Secretary of Commerce for Science and Technology shall make a certification in writing, published in the *FEDERAL REGISTER*, that the national interest would be served by such action or appearance by the former officer or employee.

E. ACTS AFFECTING A PERSONAL FINANCIAL INTEREST

.01 Title 18, U.S.C., section 208 prohibits an officer or employee, including a special Government employee, from participating personally and substantially in a governmental capacity in any matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving

as officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

.02 Section 208 does not apply:

a. If the officer or employee first advises the head of the operating unit concerned of the nature and circumstances of the matter involved, makes full disclosure of the financial interest, and receives in advance a written determination made by such official, with the approval of the appropriate program Secretarial Officer, that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from the officer or employee; or

b. If, by general rule or regulation published in the *FEDERAL REGISTER*, the financial interest has been exempted from the requirements of section 208 as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services.

F. SALARY OF GOVERNMENT OFFICIALS AND EMPLOYEES

.01 Title 18, U.S.C., section 209, prohibits:

a. An officer or employee from receiving any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the United States from any source other than the Government of the United States, except as may be contributed out of the treasury of a State, county, or municipality; and

b. Any person or organization from paying, contributing to, or supplementing the salary of an officer or employee under circumstances which would make its receipt a violation of subparagraph .01a. of this section.

.02 Section 209:

a. Does not prevent a Government employee from continuing to participate in a bona fide pension or other welfare plan maintained by a former employer;

b. Exempts special Government employees and employees serving the Government without compensation, and grants a corresponding exemption to any outside person paying compensation to such individuals; and

c. Does not prohibit the payment or acceptance of sums under the terms of the Government Employees Training Act.

G. CODE OF ETHICS FOR GOVERNMENT SERVICE

"Code of Ethics for Government Service," House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12 of July 11, 1958, which reads as follows:

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"Any Person in Government Service Should:

"Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

"UPHOLD the Constitution, laws, and legal regulations of the United States and all governments therein and never be a party to their evasion.

"GIVE a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

"SEEK to find and employ more efficient and economical ways of getting tasks accomplished.

"NEVER discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

"MAKE no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

"ENGAGE in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

"NEVER use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

"EXPOSE corruption wherever discovered.

"UPHOLD these principles, ever conscious that public office is a public trust."

H. PROHIBITIONS

.01 The prohibition against lobbying with appropriated funds (18 U.S.C. 1913) reads as follows:

"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation, but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

"Whoever, being an officer or employee of the United States or of any department or

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agency thereof, violates or attempts to violate this section, shall be fined not more than \$500 or imprisoned not more than 1 year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment."

.02 The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918). An individual may not accept or hold a position in the Government of the United States if he:

a. Advocates the overthrow of our constitutional form of government;

b. Is a member of an organization that he knows advocates the overthrow of our constitutional form of government;

c. Participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or

d. Is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts the right to strike against the Government of the United States or the government of the District of Columbia.

.03 The prohibition against employment of a member of a Communist organization (50 U.S.C. 784).

.04 The prohibitions against (a) the disclosure of classified information (18 U.S.C. 793, 50 U.S.C. 788); and (b) the disclosure of confidential information (18 U.S.C. 1905). Each employee who has access to classified information, e.g., confidential, secret, or top secret, or to a restricted area is responsible for knowing and for complying strictly with the security regulations of the Department of Commerce. (See Administrative Order 207-2.)

.05 The prohibition against employment in the competitive civil service of any person who habitually uses intoxicating beverages to excess (5 U.S.C. 7352).

.06 The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)). No employee may willfully use or authorize the use of a Government-owned or Government-leased passenger motor vehicle or aircraft for other than official purposes.

.07 The prohibition against the use of the franking privilege to avoid payment of postage on private mail (18 U.S.C. 1719).

.08 The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

.09 The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001). An employee in connection with an official matter shall not knowingly and willfully conceal or cover up a material fact or falsify official papers or documents.

.10 The prohibition against mutilating or destroying a public record (18 U.S.C. 2071). No employee may conceal, remove, mutilate, or destroy Government documents or records except for the disposition of records in accordance with law or regulation.

.11 The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508). Falsely making, altering or forging, in whole or in part, any form of transportation request is prohibited.

.12 The prohibitions against:

a. Embezzlement of Government money or property (18 U.S.C. 641). No employee may convert any Government money or Government property to his own use or the use of another person.

b. Failure to account for public money (18 U.S.C. 643). Any employee, who, having received public money which he is not authorized to retain, fails to render his accounts for same as provided by law, is guilty of embezzlement.

c. Embezzlement of the money or property of another person in the possession of the employee by reason of his employment (18 U.S.C. 654). An employee is prohibited from embezzling or wrongfully converting for his own use the money or property of another which comes under his control as the result of his employment.

.13 The prohibition against unauthorized removal or use of documents relating to claims from or by the Government (18 U.S.C. 285). No employee, without authority, may remove from the place where it was kept by authority of the United States any document, record, file, or paper intended to be used to procure the payment of money from or by the United States or the allowance or payment of any claim against the United States, regardless of whether the document or paper has already been used or the claim has already been allowed or paid; and no employee may use or attempt to use any such document, record, file, or paper to procure the payment of any money from or by the United States or the allowance or payment of any claim against the United States.

.14 The prohibition against proscribed political activities, including the following, among others:

a. Using official authority or influence for the purpose of interfering with or influencing the result of an election, except as authorized by law (5 U.S.C. 7324);

b. Taking an active part in political management or in political campaigns, except as authorized by law (5 U.S.C. 7324);

c. Offering or promising to pay anything of value in consideration of the use of, or promise to use, any influence to procure any appointive office or place under the United States for any person (18 U.S.C. 210);

d. Soliciting or receiving, either as a political contribution or for personal emolument,

anything of value in consideration of a promise of support or use of influence in obtaining for any person any appointive office or place under the United States (18 U.S.C. 211);

e. Using official authority to interfere with a Federal election (18 U.S.C. 595);

f. Promising any employment compensation, or other benefit made possible by Act of Congress in consideration of political activity or support (18 U.S.C. 600);

g. Action by a Federal officer or employee to solicit or receive, or to be in any manner concerned with soliciting or receiving, any contribution for any political purpose whatever from any other Federal officer or employee or from any person receiving compensation for services from money derived from the Treasury of the United States (18 U.S.C. 602);

h. Soliciting or receiving (by any person) anything of value for any political purpose whatever on any Government premises (18 U.S.C. 603);

i. Soliciting or receiving contributions for political purposes from anyone on Federal relief or work relief (18 U.S.C. 604);

j. Payment of a contribution for political purposes by any Federal officer or employee to another Federal officer or employee (18 U.S.C. 607); and

k. Payment of a political contribution in excess of statutory limitations and purchase of goods, commodities, advertising, or articles the proceeds of which inure to the benefit of certain political candidates or organizations (18 U.S.C. 608).

.15 The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

APPENDIX B—POSITION CATEGORIES, GRADE GS-13, AND ABOVE, REQUIRING STATEMENTS OF EMPLOYMENT AND FINANCIAL INTERESTS BY INCUMBENTS

(1) Auditors.

(2) Attorneys other than attorneys engaged in patent examining or trademark examining operations.

(3) Heads of divisions or comparable organization units, GS-15 or above.

(4) Heads of field offices or installations, GS-15 or above.

(5) Employees in positions involving assigned duties and responsibilities which require the incumbent to make fact-finding determinations or to exercise judgment in recommending a decision or an action in regard to:

a. Evaluation, appraisal, or selection of contractors or sub-contractors, prospective contractors or prospective subcontractors, proposals of such contractors or subcontractors, the activities performed by such con-

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tractors or subcontractors, or determination of the extent of compliance of such contractors or subcontractors with contract provisions.

b. Negotiation, modification, or approval of contracts or subcontracts.

c. Evaluation, appraisal, or selection of prospective project sites, or locations of work or activities, including real property proposed for acquisition by purchase or otherwise.

d. Inspection and quality assurance of material, products, or components for acceptability.

e. Review or approval for access permits.

f. Technical planning or design which involves the preparation of specifications or technical requirements.

g. Negotiation of agreements for cooperation or implementing arrangements with foreign countries, international organizations, or non-Federal enterprises.

h. Analysis, evaluation, or review of license applications.

i. Analysis, evaluation, or review of licensees' compliance with Department of Commerce regulations and requirements.

j. Utilization or disposal of excess or surplus property.

k. Procurement of materials, services, supplies, or equipment.

l. Authorization or monitoring of grants or subsidies to educational institutions or other non-Federal enterprises.

m. Audit of financial transactions.

n. Promulgation of safety standards, procedures, and hazards evaluation systems.

o. Other activities where the decision or action has a substantial economic impact on the interests of a non-Federal enterprise.

APPENDIX C—POSITION CATEGORIES BELOW GS-13 REQUIRING STATEMENTS OF EMPLOYMENT AND FINANCIAL INTERESTS BY INCUMBENTS

(1) Employees in the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, who are in the following categories of positions:

(a) Special Agents (Fish and Wildlife), Series GS-1812, grades 5 through 12.

(b) Fishery Products Inspectors, Series GS-1863, grades 5 through 12.

(5 CFR 735.104, 735.403)

[50 FR 2276, Jan. 16, 1985]

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AUTHORITY: Sec. 1, 32 Stat. 825, as amended, 15 U.S.C. 1501.

SOURCE: 33 FR 9337, June 26, 1968, unless otherwise noted.

§ 1.1 Purpose.

The purpose of this part is to describe the seal of the Department of Commerce and to delegate authority to affix the seal to certifications and documents of the Department.

§ 1.2 Description and design.

(a) The Act of February 14, 1903 (32 Stat. 825, as amended) (15 U.S.C. 1501), which established the Department of Commerce, provided that "The said Secretary shall cause a seal of office to be made for the said department of such device as the President shall approve, and judicial notice shall be taken of the said seal." On April 4, 1913, the President approved and declared to be the seal of the Department of Commerce the device which he described as follows:

Arms: Per fesse azure and or, a ship in full sail on waves of the sea, in chief proper; and in base a lighthouse illumined proper.

Crest: The American Eagle displayed. Around the Arms, between two concentric circles, are the words:

DEPARTMENT OF COMMERCE

UNITED STATES OF AMERICA

(b) The design of the approved seal is as shown below. Where necessitated by requirements of legibility, immediate comprehension, or clean reproduction, the concentric circles may be eliminated from the seal on publications and exhibits, and in slides, motion pictures, and television. In more formal uses of the seal, such as on letterheads, the full, proper rendition of the seal shall be used.

PART 1—THE SEAL OF THE DEPARTMENT OF COMMERCE

Sec.

1.1 Purpose.

1.2 Description and design.

1.3 Delegation of authority.



(c) The official symbolism of the seal shall be the following: The ship is a symbol of commerce; the blue denotes uprightness and constancy; the lighthouse is a well-known symbol representing guidance from the darkness which is translated to commercial enlightenment; and the gold denotes purity. The crest is the American bald eagle denoting the national scope of the Department's activities. (The above is a modification of the original symbolism issued with the President's approval of the seal, made necessary by changes in the functions of the Department.)

§ 1.3 Delegation of authority.

(a) Pursuant to authority vested in the Secretary of Commerce by law, (1) the Chief Administrative Officer of each operating unit, and (2) the Director, Office of Administrative Services in the Office of the Secretary, are hereby authorized to sign as Certifying Officers certifications as to the official nature of copies of correspondence and records from the files, publications and other documents of the Department and to affix the seal of the Department of Commerce to such certifications or documents for all purposes, including the purpose authorized by 28 U.S.C. 1733(b).

(b) Delegations of authority to persons other than those named in paragraph (a) of this section may be made by the Assistant Secretary for Administration.

(c) This delegation shall not affect or prejudice the use of properly authorized office or bureau seals in appropriate cases.

PART 2—PROCEDURES FOR HANDLING AND SETTLEMENT OF CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT

Sec.

- 2.1 Purpose.
- 2.2 Provisions of law and regulations thereunder.
- 2.3 Delegation of authority.
- 2.4 Procedure for filing claims.
- 2.5 Adjudication and settlement of claims.
- 2.6 Payment of claims.
- 2.7 Annual report.
- 2.8 Supplementary regulations.

AUTHORITY: Sec. 2672, 62 Stat. 983, as amended; 28 U.S.C. 2672.

§ 2.1 Purpose.

(a) The purpose of this part is to delegate authority to settle or deny claims under the Federal Tort Claims Act (in part, 28 U.S.C. 2671-2680) as amended by Pub. L. 89-506, 80 Stat. 306, and to establish procedures for the administrative adjudication of such claims accruing on or after January 18, 1967.

[32 FR 3769, Mar. 7, 1967, as amended at 48 FR 31636, July 11, 1983]

§ 2.2 Provisions of law and regulations thereunder.

(a) Section 2672 of Title 28, U.S. Code, as above amended, provides that:

The head of each Federal agency or his designee, in accordance with regulations prescribed by the Attorney General, may consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred: *Provided*, that any award, compromise, or settlement in excess of \$25,000 shall be effected only with the prior written approval of the Attorney General or his designee.

§ 2.3

Subject to the provisions of this title relating to civil actions on tort claims against the United States, any such award, compromise, settlement, or determination shall be final and conclusive on all officers of the Government, except when procured by means of fraud.

Any award, compromise, or settlement in an amount of \$2,500 or less made pursuant to this section shall be paid by the head of the Federal agency concerned out of appropriations available to that agency. Payment of any award, compromise, or settlement in an amount in excess of \$2,500 made pursuant to this section or made by the Attorney General in any amount pursuant to section 2677 of this title shall be paid in a manner similar to judgments and compromises in like causes and appropriations or funds available for the payment of such judgments and compromises are hereby made available for the payment of awards, compromises, or settlements under this chapter.

The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the United States and against the employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

(b) Subsection (a) section 2675 of said Title 28 provides that:

An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within 6 months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, crossclaim, or counterclaim.

(c) Section 2678 of said Title 28 provides that no attorney shall charge fees in excess of 25 percent of a judgment or settlement after litigation, or over 20 percent of administrative settlements.

(d) Section 2679 of said Title 28 provides that tort remedies against the United States by reason of operation

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by any Government employee of a motor vehicle while acting within the scope of his employment shall be exclusive of any other action against the employee.

(e) Section 2401(b) of said Title 28 provides that:

A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within 2 years after such claim accrues or unless action is begun within 6 months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

(f) The Tort Claims Act as amended provides that it shall apply to claims accruing 6 months or more after date of enactment (date of enactment, July 18, 1966).

(g) Pursuant to section 2672 as amended, the Attorney General has issued regulations (herein referred to as "the Regulations"; 28 CFR Part 14) prescribing standards and procedures for settlement of tort claims (31 FR 16616). Persons delegated authority under this part shall follow and be guided by such Regulations (28 CFR Part 14).

[32 FR 3769, Mar. 7, 1967]

§ 2.3 Delegation of authority.

(a) The General Counsel is hereby named as the designee of the Secretary of Commerce with respect to tort claims filed under section 2672 of Title 28, U.S. Code, as described in § 2.2, with authority to act on such claims as provided in said section 2672, including denial thereof.

(b) Authority delegated under this section may, with the approval of the General Counsel, be redelegated to other designees.

(c) Settlement or denial of any claim under this part is final for the Department of Commerce.

[48 FR 31636, July 11, 1983]

§ 2.4 Procedure for filing claims.

(a) The procedure for filing and the contents of claims shall be pursuant to §§ 14.2, 14.3, and 14.4 of the Regulations (28 CFR Part 14).

(b) Claims shall be filed with the Assistant General Counsel for Administration, Department of Commerce, Washington, D.C. 20230.

(c) If a claim is filed elsewhere in the Department, it shall immediately be recorded and transmitted to the Assistant General Counsel for Administration.

[32 FR 3769, Mar. 7, 1967, as amended at 48 FR 31636, July 11, 1983]

§ 2.5 Adjudication and settlement of claims.

(a) Upon receipt of a claim by the Assistant General Counsel for Administration, the time and date of receipt shall be recorded. The Assistant General Counsel may, after recording the claim, transmit it to the Departmental office or primary operating unit involved in the claim and request that an investigation be conducted. The appropriate Departmental office or primary operating unit shall designate an official to conduct the investigation, who shall prepare a file, obtain additional information as necessary, and prepare for the Assistant General Counsel's signature a proposed award or denial of the claim. If the investigation capabilities of the office or unit are insufficient for a proper and complete investigation, the office or unit shall consult with the Departmental Office of Investigations and Security to: (1) Have that Office conduct the investigation or (2) request another Federal agency to conduct the investigation as necessary, pursuant to § 14.8 of the regulations (28 CFR Part 14), all on a reimbursable basis.

(b) If the amount of the proposed award exceeds \$25,000 (in which case, approval by the Attorney General is required), or if consultation with the Department of Justice is desired or required pursuant to § 14.6 of the regulations, the Assistant General Counsel for Administration will prepare and compile the material required by the Department of Justice under § 14.7 of the Regulations.

(c) Denial of a claim shall be communicated as provided by § 14.9 of the regulations (28 CFR Part 14).

(d) Designees hereunder are responsible for the control over and expeditious handling of claims, bearing in

mind the applicable statutory time limitations for adjudications of claims.

[32 FR 3769, Mar. 7, 1967, as amended at 48 FR 31636, July 11, 1983]

§ 2.6 Payment of claims.

When an award is made, the file on the case shall be transmitted to the appropriate fiscal office for payment by the Department or for transmittal for payment as prescribed by § 14.10 of the Regulations (28 CFR Part 14). Prior to payment appropriate releases shall be obtained, as provided in said section.

[32 FR 3769, Mar. 7, 1967]

§ 2.7 Annual report.

The Assistant General Counsel for Administration shall compile an annual report covering the preceding fiscal year, describing actions, including denials, taken under this part, name of claimant, amount claimed, amount of any award, and a brief description of the claim. The report shall be prepared by November 15 of each year.

[48 FR 31636, July 11, 1983]

§ 2.8 Supplementary regulations.

(a) The Assistant General Counsel for Administration may from time to time issue such supplementary regulations or instructions as he deems appropriate to carry out the purpose of this part.

(b) Any designee mentioned in paragraph (a) of § 2.3 may issue regulations or instructions covering his area of responsibility hereunder which are consistent with this part and with those issued under paragraph (a) of this section, such regulations and instructions to be approved by the Assistant General Counsel for Administration.

[32 FR 3769, Mar. 7, 1967, as amended at 48 FR 31636, July 11, 1983]

§ 3.1

PART 3—RULES OF PROCEDURE FOR HANDLING CONTRACT APPEALS

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AUTHORITY: R.S. 161; 5 U.S.C. 301, Department Organization Order 20-11 (40 FR 17771, April 22, 1975).

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SOURCE: 41 FR 1584, Jan. 9, 1976, unless otherwise noted.

PRELIMINARY PROCEDURES

§ 3.1 Appeals, how taken.

Notice of an appeal must be in writing, and the original, together with two copies may be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within the time specified therefore in the contract or allowed by applicable provision of directive or law.

§ 3.2 Notice of appeal, contents of.

A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract by number, the department and agency or bureau cognizant of the dispute, and the decision from which the appeal is taken. The notice of appeal should be signed personally by the contractor making the appeal, or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's attorney. The complaint referred to in Rule 3.6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

§ 3.3 Forwarding of appeals.

When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing, or date of receipt, if otherwise conveyed, and within 10 days shall forward said notice of appeal to the Board. Following receipt by the Board of the original notice of an appeal, whether through the contracting officer or otherwise, the contractor, the contracting officer and government counsel will be promptly advised of its receipt. The contractor will be furnished a copy of these rules and notices of appearance will be requested.

[41 FR 1584, Jan. 6, 1976, as amended at 42 FR 37203, July 20, 1977]

§ 3.4 Preparation, contents, organization, forwarding, and status of appeal file.

(a) *Duties of Contracting Officer.* Within 30 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board, an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which appeal is taken;

(2) The contract including specifications and pertinent amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

Within the same time above specified, the contracting officer shall furnish the appellant a copy of each document he transmits to the Board, except those stated in paragraphs (a) (2) and (3) of this section as to which a list furnished appellant indicating documents transmitted will suffice, and those stated in paragraph (d) of this section.

(b) *Duties of the Appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall supplement the same by transmitting to the Board any documents not contained therein which he considers pertinent to the appeal, and furnishing two copies of such documents to the Government counsel.

(c) *Organization of Appeal File.* Documents in the appeal file may be originals or legible facsimile or authenticated copies thereof, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy Documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has

shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, he shall notify the other party that the same or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of Documents in Appeal File.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document in advance of hearing or of settling the record in the event there is no hearing on the appeal. If objection to a document is made, the Board will rule upon its admissibility into the record as evidence in accordance with §§ 3.13 and 3.20.

§ 3.5 Dismissal for lack of jurisdiction.

Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own motion to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

§ 3.6 Pleadings.

(a) *Appellant.* Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of his claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. Upon receipt thereof, the Board shall serve a copy upon the respondent. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opin-

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ion of the Board the issues before the Board are sufficiently defined, be deemed to set forth his complaint and the respondent shall be so notified.

(b) *Respondent.* Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, respondent shall prepare and file with the Board an original and two copies of an answer thereto, setting forth simple, concise, and direct statements of respondents defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counter-claims as appropriate. Upon receipt thereof, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

§ 3.7 Amendments of pleadings or record.

The Board upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend his pleading upon conditions just to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the documentation described in § 3.4, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or the § 3.4 documentation (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal: *Provided, however,* That the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

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§ 3.8 Hearing election.

Upon receipt of respondent's answer or the notice referred to in the last sentence of § 3.6(b), of this part, appellant shall advise whether he desires a hearing as prescribed in §§ 3.17 through 3.25 or whether, in the alternative, he elects to submit his case on the record without a hearing, as prescribed in § 3.11. In appropriate cases, the appellant shall also elect whether he desires the optional accelerated procedure prescribed in § 3.12.

§ 3.9 Prehearing briefs.

Based on an examination of the documentation described in § 3.4, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to § 3.8. In the absence of a Board requirement therefor, either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

§ 3.10 Prehearing or presubmission conference.

Whether the case is to be submitted pursuant to § 3.11, or heard pursuant to §§ 3.17 through 3.25, the Board may upon its own initiative or upon the application of either party, call upon the parties to appear before a member of the Board for a conference to consider:

(a) The simplification or clarification of the issues;

(b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(c) The limitation of the number of expert witnesses, or avoidance of simi-

lar cumulative evidence, if the case is to be heard;

(d) The possibility of agreement disposing of all or any of the issues in dispute; and

(e) Such other matters as may aid in the disposition of the appeal.

The results of the conference, except as otherwise recorded, shall be reduced to writing by the Administrative Judge or examiner and this writing shall thereafter constitute part of the record.

§ 3.11 Submission without a hearing.

Either party may elect to waive a hearing and to submit his case upon the record before the Board, as settled pursuant to § 3.13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with § 3.23.

§ 3.12 Optional accelerated procedure.

(a) In appeals involving \$25,000 or less, either party may elect, in his notice of appeal, complaint, answer, or by separate correspondence or statement prior to commencement of hearing or settlement of the record, to have the appeal processed under a shortened and accelerated procedure. For application of this rule the amount in controversy will be determined by the sum of the amounts claimed by either party against the other in the appeal proceeding. If no specific amount of claim is stated, a case will be considered to fall within this rule if the sum of the amounts which each party represents in writing that it could recover as a result of a Board decision favorable to it does not exceed \$25,000. Upon such election, a case shall then be processed under this rule unless the other party objects and shows good cause why the substantive nature of the dispute requires processing under the Board's regular procedure

and the Board sustains such objection. In cases proceeding under this section, parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs.

(b) Written decision by the Board in cases proceeding under this rule normally will be short and contain summary findings of fact and conclusions only. The Board will endeavor to render such decisions within 30 days after the appeal is ready for decision. Such decisions will be rendered for the Board by a single member with the concurrence of the Chairman or a designated member; except that in cases involving \$5,000 or less where there has been a hearing, the single member presiding at the hearing, the single member presiding at the hearing may, in his discretion, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions and decision of the appeal. In the later instance, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the date from which the period for filing a motion for reconsideration under § 3.29 commences.

(c) Except as herein modified, these rules otherwise apply in all respects.

§ 3.13 Settling the record.

(a) The record upon which the Board's decision will be rendered consists of the appeal file described in § 3.4 and, to the extent the following items have been filed, pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will at all reasonable times be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after

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completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

§ 3.14 Discovery—depositions.

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach

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the testimony of the witness given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions as evidence in supplementation of that record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

§ 3.15 Interrogatories to parties, admission of facts, and production and inspection of documents.

(a) *Interrogatories to parties.* After an appeal has been filed with the Board, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the Board will determine the extent to which the interrogatories will be permitted.

(b) *Admission of facts.* After an appeal has been filed with the Board, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(c) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the Board may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the Board shall specify just terms and conditions in making the inspection and taking the copies and photographs.

§ 3.16 Service of papers.

Papers shall be served personally or by mailing the same, addressed to the party upon whom service is to be made. Copies of complaints, answers and simultaneous briefs shall be filed directly with the Board. The party

filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board, or on the letter transmitting the same, that a copy has been so furnished.

HEARINGS

§ 3.17 Where and when held.

Hearings will ordinarily be held in the Washington, D.C. area, except that upon request seasonably made and upon good cause shown, the Board may set the hearing at another location. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. On request or motion by either party and upon good cause shown, the Board may, in its discretion, advance a hearing.

§ 3.18 Notice of hearings.

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will give due regard to the desires of the parties and to the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties.

§ 3.19 Unexcused absence of a party.

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in § 3.11.

§ 3.20 Nature of hearings.

Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding member in supervising the extent and manner of presentation of such evidence. In gen-

eral, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding member. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

§ 3.21 Examination of witnesses.

Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the Board member shall otherwise order. If the testimony of a witness is not given under oath, the Board may warn the witness that his statements may be subject to the provisions of Title 18, United States Code, sections 287 and 1001, and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

§ 3.22 Copies of papers.

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

§ 3.23 Posthearing briefs.

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding member at the conclusion of the hearing. Ordinarily, they will be simultaneous briefs, exchanged within 30 days after receipt of transcript.

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§ 3.24 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Transcripts or copies of the proceedings shall be supplied to the parties at such rates as may be fixed by the Board.

§ 3.25 Withdrawal of exhibits.

After a decision has become final the Board may, upon request and after notice to the other party, in its discretion, permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

REPRESENTATION

§ 3.26 The appellant.

An individual appellant may appear before the Board in person, a corporation by an officer thereof, a partnership or joint venture by a member thereof, or any of these by an attorney at law duly licensed in any state, commonwealth, territory, or in the District of Columbia. An attorney representing an appellant shall file a written notice of appearance with the Board.

§ 3.27 The respondent.

Government counsel may, in accordance with their authority represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or his attorney in the form specified by the Board from time to time. Whenever at any time it appears that appellant and the government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal: *Provided, however*, That if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

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DECISIONS

§ 3.28 Decisions.

Decisions of the Board will be made in writing and authenticated copies thereof will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions shall be open for public inspection at the offices of the Board in Washington, D.C. Decisions of the Board will be made solely upon the record, as described in § 3.13.

MOTION FOR RECONSIDERATION

§ 3.29 Motion for reconsideration.

A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

DISMISSALS

§ 3.30 Dismissal without prejudice.

In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

§ 3.31 Dismissal for failure to prosecute.

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal

should not be either dismissed or granted, as appropriate. If the offending party shall fail to show such cause, the Board may take such action as it deems reasonable and proper under the circumstances.

EX PARTE COMMUNICATIONS

§ 3.32 Ex parte communications.

No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

SANCTIONS

§ 3.33 Sanctions.

If any party fails or refuses to obey an order issued by the Board, the Board may make such order in regard to the failure as it considers necessary to the just and expeditious conduct of the appeal.

EFFECTIVE DATE AND APPLICABILITY

§ 3.34 Effective date and applicability.

These rules shall take effect on January 15, 1976. Except as otherwise directed by the Board, these rules shall not apply to appeals which have been docketed prior to their effective date.

PART 4—PUBLIC INFORMATION

Sec.

- 4.1 Scope and purpose.
- 4.2 Policies.
- 4.3 Definitions.
- 4.4 Availability of materials for inspection and copying; indexes.
- 4.5 Requests for records.
- 4.6 Initial determinations of availability of records.
- 4.7 Inspection of copying of disclosable records.
- 4.8 Appeals from initial denials or untimely delays.
- 4.9 Fees.

APPENDIX A—PUBLIC INFORMATION

Sec.

APPENDIX B—FREEDOM OF INFORMATION PUBLIC FACILITIES AND ADDRESSES FOR REQUESTS FOR RECORDS

APPENDIX C—OFFICIALS AUTHORIZED TO MAKE INITIAL DENIALS OF REQUESTS FOR RECORDS

AUTHORITY: 5 U.S.C. 552, 5 U.S.C. 553; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950, unless otherwise noted.

SOURCE: 40 FR 11553, Mar. 12, 1975, unless otherwise noted.

§ 4.1 Scope and purpose.

(a) This part revises the rules of the Department of Commerce whereby the Department and its organizational units are to make publicly available the materials and indexes specified in 5 U.S.C. 552 (a)(2) and the records requested under 5 U.S.C. 552(a)(3). This revision is to conform the rules to the requirements of the Freedom of Information Act (5 U.S.C. 552), as amended by Pub. L. 93-502, 88 Stat. 1561, effective February 19, 1975.

(b) These rules supplement Department Administrative Order 205-12, which contains policies, delegations of authority, and other rules implementing 5 U.S.C. 552. DAO 205-12 is attached as Appendix A to this part.

(c) Certain units of the Department other than those identified in § 4.4(d) have, pursuant to delegated authority and for appropriate reasons, established their own facilities for the public inspection and copying of records. The units have provided for separate places to which requests for records are to be made and received. These facilities and places are identified in Appendix B to this part. The units may publish supplementary rules in addition to but not inconsistent with this part, DAO 205-12, and the law in their respective chapters of the Code of Federal Regulations or otherwise in the FEDERAL REGISTER. All of such rules shall be maintained in the central public reference facility identified in § 4.4(c), where information about them may be obtained.

§ 4.2 Policies.

(a) Department Administrative Order 205-12 contains the basic policies and other criteria to be considered in issuing and administering these

§ 4.3

rules. To the extent that these policies and criteria are not specified in this part or in any supplemental rules of units, they are incorporated by reference.

(b) Requests for records made under 5 U.S.C. 552(a)(3) apply only to existing records, and the Department is not required, in response to a request, to create records by combining or compiling information contained in existing records, or otherwise to prepare new records. However, Departmental officials may, upon request, provide or create new information in record form pursuant to user charge statutes, such as 15 U.S.C. 1525-1527, or in accord with authority otherwise provided by law.

§ 4.3 Definitions.

(a) All terms used in this part which are defined in 5 U.S.C. 551 shall have the same meaning herein.

(b) As used in this part, "Act" means the "Freedom of Information Act", as amended, 5 U.S.C. 552.

(c) The terms "Office of the Secretary" and "operating unit" are defined in Department Organization Order 1-1, "Mission and Organization of the Department of Commerce" (35 FR 19704, December 27, 1970).

(d) The term "unit" as used in this part means (1) an operating unit of the Department, and (2) each Secretarial officer and the persons and the Departmental officers under each.

§ 4.4 Availability of materials for inspection and copying; indexes.

(a) The Assistant Secretary for Administration has established and maintains a central public reference facility available to units of the Department, at which place the following materials of those units utilizing the facility shall be made available for public inspection and copying:

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the participating organizations and are not published in the FEDERAL REGISTER;

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(3) Administrative staff manuals and instructions to staff that affect a member of the public;

(4) Current indexes providing identifying information for the public as to any matter which was issued, adopted, or promulgated after July 4, 1967, and is required by 5 U.S.C. 552(a)(2) to be made available or published;

(5) Records of the final votes of each member in every proceeding of an agency comprised of more than one member;

(6) Rules and decisions denying requests for records which otherwise implement or relate to the Act; and

(7) Materials published in the FEDERAL REGISTER pursuant to 5 U.S.C. 552(a)(1) and such other materials which each unit may consider desirable and practical to make available for the convenience of the public.

(b) The Secretary of Commerce has determined (DAO 205-12, subparagraph 5.02a.5.) that it is unnecessary and impracticable to publish quarterly or more frequently and distribute (by sale or otherwise) copies of each index and supplements thereto, as provided in 5 U.S.C. 552(a)(2). Upon request, copies of such indexes shall be provided at the public reference facility at a cost not to exceed the direct cost of duplication.

(c) The central facility established by the Assistant Secretary for Administration is the Central Reference and Records Inspection Facility, Room 5319, Department of Commerce Building, 14th Street between Constitution Avenue and E Street, NW., Washington, D.C. 20230. The facility is open to the public Monday through Friday of each week, except on official holidays of the Federal Government, between the hours of 9 a.m. and 4:30 p.m. There are no fees or formal requirements for inspection of materials. Coin-operated equipment for making copies of these materials is available nearby for use by the public. Copies of various Commerce Department materials regularly available for sale by the Department may be purchased at the facility or information about them obtained. Correspondence concerning materials available at the facility or information about the rules implementing the Act may be sent to the

above address. The telephone number of the facility is Area Code 202, 377-4217.

(d) The following units of the Department are participating in the use of this central facility: All components of the Office of the Secretary of Commerce.

(e) Other units of the Department which have established separate public reference facilities, listed in Appendix B to this part, may publish rules applicable to the services provided therein, not inconsistent with this part, for public inspection and copying of materials.

[40 FR 11553, Mar. 12, 1975, as amended at 40 FR 24721, June 10, 1975; 44 FR 10364, Feb. 20, 1979]

§ 4.5 Requests for records.

(a) A request for a record of the Department (or information contained therein) which is not customarily made available to the public as part of the Department's regular informational services, or which is not available in a public reference facility described in § 4.4(c) or Appendix B to this part, shall be made in writing, with the envelope and the letter clearly marked "Freedom of Information Request" or "Request for Records" or the equivalent, to distinguish it from other mail to the Department. Each such request, so marked, shall be addressed to the unit of the Department identified in Appendix B to this part which the requester knows or has reason to believe is responsible for the records requested. If the requester is not sure which is the responsible addressee unit, it shall address the request to the central facility identified in § 4.4(c), or obtain advance information from that facility as to which is the responsible addressee unit.

(b) Any request for records which is not marked and addressed as specified in paragraph (a) of this section will be so marked and addressed by Department personnel and forwarded immediately to the responsible unit having possession or control of the records requested or having primary concern with such records. A request which is improperly addressed by the requester will not be deemed to have been "received" for purposes of the time period

for a request for records set forth in 5 U.S.C. 552(a)(6), until the earlier of the time that (1) forwarding of the request to the responsible unit has been effected, or (2) such forwarding would have been effected with the exercise of due diligence by Department personnel. In each instance when a request is forwarded, the responsible unit receiving it shall notify the requester that its request was improperly addressed and of the date the request was received by the unit.

(c) A request for records shall sufficiently identify the records requested to enable Department personnel familiar with the subject matter to locate them with a reasonable amount of effort. The requester shall, to the extent possible, furnish specific description information regarding dates and place the records were made, the file descriptions, subject matter, persons involved, and other pertinent details that will help identify the records. If the request relates to a matter in pending litigation, the court, location and case shall be identified. When more than one record is requested, the request shall clearly describe each specific record, and the specific information requested which is contained in a record, so that its availability may be separately determined. Employees at a facility or at a specific address listed in Appendix B will assist the public to a reasonable extent in framing a request.

§ 4.6 Initial determinations of availability of records.

(a) The responsible unit which receives a request for records shall promptly log the receipt of the request, and within ten days of its receipt (excepting Saturdays, Sundays, and legal public holidays) shall initially determine:

(1) Whether the request is for records under the Act, is for materials available otherwise than under the Act, or is for information not contained in existing records and, therefore, not under the Act. The requester shall be promptly notified in writing how the request is being handled when it does not come within the Act.

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(2) Whether the records requested are reasonably described and can be located on the basis of the information supplied by the requester. If any of the records requested cannot be identified and located from the information furnished, the unit shall promptly so inform the requester in writing, specifying what additional identification is needed to assist the unit in locating the record, and offering to assist the requester to reformulate its request.

(3) Whether the records no longer exist, or are not in the unit's possession. The unit should, if it knows which unit of the Department or other agency may have the records, forward the request to it. In each instance, the unit shall promptly notify the requester in writing.

(4) Whether the requested records are the exclusive or primary concern of another executive agency. If so, the unit shall promptly refer the request to that other agency for further action under its rules, and promptly notify the requester in writing of this referral.

(5) Whether the request is a categorical one. A categorical request, i.e., one for all records falling within a reasonably specific but broad category, shall be regarded as conforming to the statutory requirement that records be reasonably described, if the particular records can be identified, searched for, collected and produced without unduly burdening or disrupting the unit's operations. If the categorical request does not reasonably describe the records requested, the unit shall promptly notify the requester in writing specifying what additional identification is needed, and extend to the requester an opportunity to confer with Department personnel to attempt to reformulate the request so as reasonably to describe the records.

(6) In each of the situations set forth in paragraphs (a) and (b) of this section, the procedures relating to fees described in § 4.9 shall also be applied and coordinated as appropriate.

(b) An authorized official in the responsible unit shall review the request to determine the availability of the records requested.

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(1) The determination shall be made within ten days (excepting Saturdays, Sundays and legal public holidays) of the receipt of the request (as defined in § 4.5(b) of this part), unless the time is extended as provided in paragraph (b)(2) of this section.

(2) In unusual circumstances, an appropriate official authorized to make initial denials of requests may extend the time for initial determination for up to ten days (excluding Saturdays, Sundays and legal public holidays) by written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. Extensions of time for the initial determination and extensions of time on appeal may not exceed a total of ten days, and time taken for the former counts against available appeal extension time. "Unusual circumstances" means, but only to the extent reasonably necessary to the processing of a particular request:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request, or (iii) the need for consultation, which shall be conducted with all practical speed, with another agency or unit having a substantial interest in the determination of the request, or among two or more components of the responsible unit having substantial subject-matter interest therein.

(3) If no determination has been sent to the requester at the end of the initial ten day period, or the last extension thereof, the requester may deem his request to be initially denied, and exercise a right of appeal therefrom. When no determination can be made within the applicable time period, the responsible unit shall nevertheless exercise due diligence in continuing to process the request. It shall, on expiration of the applicable time period, inform the requester of the reason for the delay, of the date a determination is expected to be sent, and of the requester's right to treat the

delay as a denial and to appeal therefrom. It may ask the requester to forego an appeal until a determination is made.

(4) If it is determined that the records requested are to be made available, and there are no further fees to be paid, the responsible official shall promptly notify the requester as to where and when the requested records or copies may be obtained or otherwise provide them as agreed. If there are fees still to be paid by the requester, it shall be notified that upon their payment the records will immediately be made available.

(5) Appendix C lists the limited number of officials who have been authorized to make initial denials of requests for records, except as may be subsequently authorized. A reply initially denying, in whole or in part, a request for records shall be in writing, signed by an authorized official, and it shall include:

(i) A reference to the specific exemption or exemptions of the Act authorizing the withholding of the records, stating briefly why the exemption applies and, where relevant, why a discretionary release is not appropriate.

(ii) The name and title or position of each official responsible for the denial.

(iii) A statement of the manner in which any reasonably segregable portion of a record shall be provided to the requester after deletion of the portions which are determined to be exempt.

(iv) A brief statement of the right of the requester to appeal the determination to the General Counsel and the address to which the appeal should be sent, in accordance with § 4.8 (a) and (b).

(6) A copy of each initial denial and its incoming request for records shall be provided to the Assistant General Counsel for Administration.

[40 FR 11553, Mar. 12, 1975, as amended at 46 FR 62245, Dec. 23, 1981]

§ 4.7 Inspection and copying of disclosable records.

(a) Unless the requester has otherwise indicated, disclosable records shall be sent to the appropriate facility to be held for a reasonable time for

inspection by the requester, after any fees due are paid.

(b) The requester may copy by hand any portion of the record may use the coin-operated copying equipment at the facility to make copies, or may make other arrangements for copying at specified fees.

(c) No change or alteration of any kind may be made to the record being inspected, nor may any matter be added to or deleted therefrom. Papers bound or otherwise assembled in a record file may not be disassembled by the requester. Title 18, United States Code, section 2701(a) makes it a crime to conceal, mutilate, obliterate, or destroy any record filed in any public office, or to attempt to do any of the foregoing. Staff of the facility are authorized to supervise inspection as necessary to protect the records of the Department, and they shall provide assistance if disassembly of a record is necessary for copying purposes.

(d) If a requester does not want to inspect a record by personal visit to the facility, a copy shall be mailed to the requester upon its payment of copying and postage fees as set forth in § 4.9 of this part, and other fees due. Original copies of records of the Department shall not be sent to any location other than the appropriate facility for inspection.

(e) A copy of transcripts of public hearings held by a unit of the Department may be made available for inspection when it is not in actual official use.

§ 4.8 Appeals from initial denials or untimely delays.

(a) When a request for records has been initially denied in whole or in part, or has not been timely determined, the requester may submit a written appeal within thirty calendar days after the date of the written denial or, if there has been no determination, on the last day of the applicable time limit. The appeal shall include a copy of the original request, the initial denial, if any, and a statement of the reasons why the records requested should be made available and why the initial denial, if any, was in error. No personal appearance, oral

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argument or hearing on appeal is provided.

(b) An appeal shall be addressed to the General Counsel, Department of Commerce, Room 5879, 14th and Constitution Avenue NW., Washington, D.C. 20230. Both the appeals envelope and the letter shall be clearly marked "Freedom of Information Appeal" or "Appeal for Records" or the equivalent. An appeal not addressed and marked as provided herein will be so marked by Department personnel when it is so identified, and will be forwarded immediately to the General Counsel. An appeal incorrectly addressed will not be deemed to have been "received" for purposes of the time period for appeal set forth in 5 U.S.C. 552(a)(6), until the earlier of the time that (1) forwarding to the General Counsel has been effected, or (2) such forwarding would have been effected with the exercise of due diligence by Department personnel. In each instance when an appeal is so forwarded, the Office of General Counsel shall notify the requester that the appeal was improperly addressed and of the date the appeal was received by the office.

(c) The General Counsel shall act upon an appeal within twenty days (excluding Saturdays, Sundays and legal public holidays) of its receipt, unless an extension of time is made in unusual circumstances, when the time for action may be extended up to ten days (excluding Saturdays, Sundays and legal public holidays) minus any days of extension granted at the initial request level. A notice of such extension shall be sent to the requester, setting forth the reasons and the date on which a determination of the appeal is expected to be sent. As used in this paragraph, "unusual circumstances" are defined in § 4.6(b)(2).

(d) If a decision on appeal is to make the records available to the requester in part or in whole, such records shall be promptly made available for inspection and copying as provided in § 4.7.

(e) If no determination of an appeal has been sent to the requester within the twenty day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies with respect to such

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request, giving rise to a right of judicial review as specified in 5 U.S.C. 552(e)(4). When no determination can be sent to the requester within the time limit, the General Counsel shall nonetheless exercise due diligence in continuing to process the appeal. When the time limit expires, the requester shall be informed of the reason for the delay, of the date when a determination may be expected to be made, and of his right to seek judicial review. The requester may be asked to forego judicial review until the appeal is determined.

(f) A determination on appeal shall be in writing and, when it denies records in whole or in part, the notice to the requester shall include: (1) Notation of the specific exemption or exemptions of the Act authorizing the withholding, a brief explanation of how the exemption applies, and, when relevant, a statement as to why a discretionary release is not appropriate; (2) a statement that the decision is final for the Department; (3) advice that judicial review of the denial is available in the district in which the requester resides or has his principal place of business, the district in which the agency records are situated, or the District of Columbia; and (4) the names and titles or positions of each official responsible for the denial of the request.

(g) The General Counsel shall send a copy of each determination on appeal to the central public reference facility referred to in § 4.4(c) where it will be indexed and kept available for public inspection and copying.

[40 FR 11553, Mar. 12, 1975, as amended at 46 FR 62245, Dec. 23, 1981]

§ 4.9 Fees.

(a) *Uniform fee schedule.* Unless waived or reduced as provided in paragraph (b) of this section, only the following fees shall be charged in connection with requests for records subject to this part.

(1) *Searches other than for computerized records.* \$2.50 for each one-quarter hour (or fraction thereof) per person for time spent by clerical, professional and supervisory personnel in examining records in order to find the

records and information that are within the scope of the request, and for transportation of personnel and records necessary to the search.

(2) *Searches for computerized records.* Actual direct cost of the computer time to the Government agency to use the equipment involved in the search, not to exceed \$270 per hour (\$4.50 per minute). This fee includes both machine time and that of related operator and clerical personnel. If programming is necessary to conduct the search, there will be an additional fee of \$2.50 for each one-quarter hour (or fraction thereof) per person for programmer/analyst time. The fee for computer printouts shall be 20 cents per page for the original copy and carbon copies concurrently printed.

(3) *Copying of records.* Seven cents per copy of each page, up to 8½" × 14", made by photocopy or similar process. Normally, only one copy will be provided. Added copies will be provided only upon a showing of demonstrated need.

(4) *Copies of microfilm or microfiche.*

16 mm. (100 ft. roll), \$6.00.

35 mm. (100 ft. roll), \$7.00.

105 mm. fiche, \$0.25 each.

Aperture cards, \$0.25 each.

\$0.25 per page for each microform frame printed on paper.

(5) *Certification or authentication of records.*

\$3.00 per certification or authentication.

(6) *Forwarding records to requesting party.* Actual cost of postage, insurance and special fees, if their total exceeds \$1.00.

(7) *Other costs.* When other duplication costs not specifically identified in paragraph (a) of this section are requested and provided, their direct cost to the Department shall be charged. Other services and materials requested which are not covered by this part are chargeable at actual cost to the Department.

(b) *Waiver or reduction of fees.* A fee shall not be charged, or alternatively it may be reduced, in the following instances:

(1) Requests for Department records made by a Federal agency, Federal court (excluding parties), Congression-

al committee or subcommittee, the General Accounting Office, or the Library of Congress, are not made under the Act, and fees payable under this part do not apply.

(2) The records are requested by a State or local government, an inter-governmental agency, a foreign government, a public international organization, or an agency thereof, and when it is determined by a responsible Departmental official that it is an appropriate courtesy, or that the records are for purposes that are in the public interest and will promote the objectives of the Act and of the Department.

(3) When it is determined, either upon petition submitted by the requester, or by a responsible Departmental official on his own initiative, that waiver or reduction of the fee is in the public interest because furnishing the information in the records requested can be considered as primarily benefiting the general public. Any such petition shall specify the intended purpose to which the records requested will be put, why all of them are necessary, and any other relevant factors, in order to show how the information furnished in all or part of the records can be expected to primarily benefit the general public.

(4) When it is determined by the responsible Departmental official, based upon a petition therefor, that the requester is indigent, that the request for records has a strong public interest justification, and that agency resources permit a waiver of the fee. A person is deemed to be indigent if he does not have income or resources sufficient to pay the fees involved.

(5) A search fee totaling \$10 or less shall be waived. A copying fee totaling \$1 or less may be waived. The fees for other contemporaneous requests made by the same or related requesters shall be aggregated to determine the total fee.

(c) *Payment of fees.* The following conditions shall apply to payment of fees charged under this part.

(1) A search fee provided in paragraph (a) of this section which exceeds \$50 is chargeable even when no records responsive to the request are found, or when the records requested

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are determined by the responsible Department official to be totally exempt from disclosure.

(2) If the requester has notified the Department in or with its request for records that it is willing to pay an amount sufficient to cover the necessary search fee, a search may be made for the records without further notice to the requester, unless the requester is delinquent in making past payments or the estimated search fee will exceed \$100.

(3) If the requester has stated in or with its request that it is willing to pay a specified amount which is less than \$100 for a search, a search may be made for the records without further notice to the requester if the fees are estimated to be less than the specified limit, unless the requester is delinquent in making past payments.

(4) If the estimated fee (i) exceeds \$100 for a request covered within paragraph (c)(2) of this section, (ii) exceeds the limits specified by a requester within paragraph (c)(3) of this section, or

(iii) Exceeds \$50 and the requester has said nothing about payment; or if the requester in any instance is delinquent in past payments, the requester shall be notified immediately (by telephone if possible) with written confirmation of the estimated total fee and shall be asked to pay such fee before the search may be conducted or continued. The notice may advise the requester that it may confer with specified Department personnel as to possible reformation of the request in order to reduce the fee.

(5) The administrative time limitations prescribed in 5 U.S.C. 552(a)(6) shall be tolled from the time the notice described in paragraph (c)(4) of this section is sent to the requester until the time that the unit receives payment of the estimated fee from the requester, unless the responsible Departmental official determines to postpone payment of the search fee until later in the search or until it is completed.

(6) When a specific fee is determined to be payable and notice thereof has been given to the requester, the payment of such fee shall be received before the requested records or any

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part thereof are made available to the requester.

(7) Payment of fees shall be made in cash or preferably by check or money order payable to "U.S. Department of Commerce", and, they shall be paid or sent to the unit stated in the billing notice or, if none, to the unit handling the request. Where appropriate, the responsible official may require that payment be made in the form of a certified check.

(8) If an advance payment of an estimated fee exceeds the actual total fee by \$1 or more, the difference shall be refunded to the requester. If the estimated fee paid is less than the actual fee later determined, any difference in excess of \$1 may be further billed to and is payable by the requester.

[40 FR 11553, Mar. 12, 1975, as amended at 47 FR 51735, Nov. 17, 1982]

APPENDIX A—PUBLIC INFORMATION

[DAO 205-12]

SECTION 1. Purpose.—.01 This order, and the rules and other materials which implement it, are designed to carry out the responsibilities of the Department of Commerce under the Freedom of Information Act, as amended (5 U.S.C. 552), hereinafter referred to as "the Act".

.02 This revision updates and clarifies the provisions of the order (dated June 29, 1967) which it supersedes, in light of the amendments to the Act which become effective February 19, 1975. Section 7, "Compulsory Process Requesting Documents or Testimony", contained in the superseded order, is now found in Department Administrative Order 218-5, to be published separately in the FEDERAL REGISTER.

SEC. 2. Authorities.—This order is issued pursuant to the Act; 5 U.S.C. 553; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950; and other authority vested by law in the Secretary applicable to the dissemination of records and other information of the Department and charges for services related thereto.

SEC. 3. Policies.—.01 The Department of Commerce, in fulfilling its statutory missions to foster, promote and develop the foreign and domestic commerce of the United States and to administer the specific programs entrusted to it, regularly develops, collects, analyzes, and disseminates facts, statistics, consensus, charts, scientific findings, technology, and other information, and performs other services, in order to assist the business community and other

segments of the public, according to their needs and interests. This information which the Department develops, collates, and disseminates is generally made readily available, either without charge or by purchase, to the affected persons and to anyone else who may be interested, through publications, reprints of regulations (by subscription or otherwise), press releases, special reports, correspondence and personal interviews or conferences with staff, speeches, and other media. It is the policy of the Department to continue its regular practices of disseminating information to the public prepared as a part of its program responsibilities, to the fullest extent legally permissible and economically feasible, and to continue to handle public requests for such information (which may include records) in the usual manner through its regular facilities and channels, as distinguished from those requests for records subject to 5 U.S.C. 552(a) (3) which are to be made and handled in accord with the rules established in and pursuant to subsections 5.03 and 5.04 of this order.

In carrying out this policy, the officials designated in subsection 4.01 of this order shall (a) establish and continue an effective program of communicating to the public the useful information obtained or developed in the fulfillment of their organizational missions; (b) publicize the availability of such informational materials in their rules or by other practical means so that the public shall utilize the regular informational programs of the Department, rather than resorting to the formal procedures for requesting records established pursuant to 5 U.S.C. 552(a)(3); and (c) insure that any such information which is given to individuals or special groups shall also be made available to the general public in accord with subsections 5.01 and 5.02 of this order, when and to the extent such information is subject to publication or inspection under 5 U.S.C. 552(a)(1), (2), or (5).

.02 Officials responsible for determining, in accord with the Act and this order:

(a) What materials are to be published in the **FEDERAL REGISTER**; (b) What and how materials are to be made available for public inspection and copying, including indexing; and (c) What and how records which are requested are to be made available; shall, where discretion exists in making such determinations, take an affirmative and constructive view of the requirements of the Act. Accordingly, in making rules and specific determinations, they shall among other factors: (1) Provide such information to the affected public as will enable it to deal effectively and knowledgeably with their organizations; (2) keep within the limits of demonstrable need the use of the legal authorities which permit the withholding of information and records; (3) apply principles

of equal treatment to requests for records; (4) consider disclosure to be the rule rather than the exception; (5) consider the public convenience as well as the efficient conduct of their organizations' business; (6) act in a timely manner; and (7) be guided by materials prepared by the Department of Justice and the Office of General Counsel of the Department, and by applicable court decisions.

SEC. 4. Delegation of authority.

.01 The Secretary of Commerce is responsible for the effective administration of the Act and other laws applicable to the dissemination of records and other information of the Department. Aside from the Secretary's retaining authority for his immediate office, or as he otherwise may act, authority is hereby delegated to the following officials of the Department to decide initially whether or not to make publicly available records and other information subject to the Act which are in the possession of their organizations, in accord with the provisions of the Act, this order and rules supplementing it, other applicable law, and as may be otherwise provided by the Secretary:

a. Secretarial Officers, for their respective offices and for the Department staff units reporting to them (as defined in Department Organization Order 1-1, "Mission and Organization of the Department of Commerce" (35 FR 19704, December 27, 1970)), as amended.

b. Heads of operating units of the Department (as defined in Department Organization Order 1-1).

.02 Although the officials having authority under subsection 4.01 of this section may permit employees within their organizations to make records and information publicly available under the Act, they shall redelegate authority initially to deny such records and information only to a limited number of officers or employees under them without power of further redelegation.

.03 The authority to make final decisions on appeal of initially denied requests for records is hereby delegated to the General Counsel of the Department without power of further redelegation.

.04 The General Counsel of the Department, and his designees, shall provide legal services to enable the officials designated in subsections 4.01 and 4.02 of this section to discharge their respective duties and responsibilities under and pursuant to this order, and shall make legal interpretations of questions arising thereunder. The General Counsel shall also act as the focal point within the Department for consultation or other communication with the Department of Justice with respect to any actions to be taken in connection with the Act, this order, and rules implementing it.

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.05a. Program officials shall provide all support and assistance necessary to enable the General Counsel to perform the functions delegated in this order. This shall include (i) keeping the Office of the General Counsel informed of Freedom of Information Act requests received by the unit; (ii) providing prompt responses to Office of the General Counsel instructions, or requests for assistance; (iii) as requested, allowing the Office of the General Counsel access to relevant records; and (iv) promptly consulting with the Office of the General Counsel regarding any legal issues which arise during the processing of a request.

b. The Office of the Inspector General shall comply with the provisions of this order, except that Office of the Inspector General need not allow the Office of the General Counsel access to records to the extent that (i) information contained therein might reveal the identity of a confidential source, or (ii) the Inspector General determines that disclosure to Office of the General Counsel would interfere with an audit, investigation, or prosecution.

Sec. 5. Functions and responsibilities—01 Publication in the **FEDERAL REGISTER** (5 U.S.C. 552(a)(1) of the Act).

a. The following information of the Department and its component organizations shall be separately stated and currently published in the **FEDERAL REGISTER** for the guidance of the public:

1. Descriptions of the central and field organizations and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions;

2. Statements of the general course and method by which functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

3. Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

4. Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by their agencies; and

5. Each amendment, revision, or repeal of the foregoing.

b. The information contained in paragraph 5.01a of this subsection shall be published in the **FEDERAL REGISTER** in the form of or included in:

1. Department Organization Orders, including any supplements and appendices thereto. The Assistant Secretary for Administration shall cause such materials to be published in the **FEDERAL REGISTER**. The De-

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partment Organization Orders and their supplements and appendices contain, among other information, the descriptions of the various organizations of the Department, and in many instances the other information indicated in subparagraphs 5.01a.1. and 2. of this subsection.

2. Department Administrative Orders, including any supplements or appendices thereto.

3. Other Office of the Secretary or operating unit directives.

4. Rules and orders contained in the various Titles of the Code of Federal Regulations assigned to the Office of the Secretary and to the operating units of the Department.

5. General notices.

6. Other forms of publication when incorporated by reference in the **FEDERAL REGISTER** with the approval of the Director of the Federal Register.

c. Officials responsible for determining what materials are to be submitted for publication in the **FEDERAL REGISTER** pursuant to 5 U.S.C. 552(a)(1) shall consider, among other factors, in making such determinations:

1. That those matters which fall within one or more of the exemptions contained in 5 U.S.C. 552(b) need not be published. However, it may be decided, in accord with subsection 3.02 of this order, that publication even of such matters should in some instances and respects be made.

2. That matters which are reasonably available to the class of persons affected thereby and which have been or are to be incorporated by reference in the **FEDERAL REGISTER** with the approval of the Director of the Federal Register are deemed to be published in the **FEDERAL REGISTER**. In such cases, the standards and procedures for incorporation by reference established by the Director of the Federal Register (See 1 CFR Part 51; 37 FR 23614, November 4, 1972) shall be followed.

3. That matters to which members of the public do not have to resort or by which they are not to be adversely affected, or which do not impose burdens, obligations, conditions, or limitations upon persons affected, need not be published in the **FEDERAL REGISTER** under 5 U.S.C. 552(a)(1). However, the policy considerations expressed in subsection 3.02 of this order may in certain instances suggest the publication of such matters.

4. That no person shall in any manner be required to resort to or be adversely affected by any matter required to be published in the **FEDERAL REGISTER** under 5 U.S.C. 552(a)(1) when it is not so published. However, actual and timely notice given to such a person cures any defect of nonpublication as to such person, since a person having

such actual notice is equally bound as one having constructive notice by FEDERAL REGISTER publication. Nevertheless, such actual notice should as a matter of policy be in addition to, rather than instead of, publication.

5. That "currently publish" as provided in 5 U.S.C. 552(a)(1) means promptly at the time that the action occurs.

.02 *Availability of materials for inspection and copying; indexing* (5 U.S.C. 552(a)(2) and (5) of the Act).

a. The head of each operating unit of the Department shall for his unit, and the Assistant Secretary for Administration shall for the officials, officers and units referred to in paragraph 4.01a. of this order, in accordance with rules which they shall cause to be published in the FEDERAL REGISTER, make available for public inspection and copying the following materials, unless such materials are promptly published and copies offered for sale:

1. Final opinions (including concurring and dissenting opinions), as well as orders, made in the adjudication of cases.

2. Those statements of policy and interpretations which have been adopted by the agency and are not published in the FEDERAL REGISTER.

3. Administrative staff manuals and instructions to staff that affect a member of the public.

4. Where applicable, a record of the final votes of each member of an agency in every agency proceeding when the agency has more than one member. (The terms "agency proceeding" and "agency" are defined in 5 U.S.C. 551, as amended by 5 U.S.C. 552(e)).

5. An index, currently maintained, which provides identifying information for the public as to any matter (a) which has been issued, adopted, or promulgated since July 4, 1967, and (b) which is required to be made available or published pursuant to 5 U.S.C. 552(a)(2). It is hereby determined, subject to subsequent redetermination by the Assistant Secretary for Administration pursuant to changed circumstances, that it is unnecessary and impracticable to publish quarterly or more frequently and distribute (by sale or otherwise) copies of each such index and supplements thereto. Copies of such indexes shall be provided upon request at a cost not to exceed the direct cost of duplication.

b. The rules published in the FEDERAL REGISTER under paragraph 5.02a. of this subsection shall include provisions for the time, place, copying fees, and any procedures applicable to making such materials available at facilities or otherwise for public inspection and copying.

c. The Assistant Secretary for Administration shall establish and maintain a centralized public reference facility for the inspection and copying of materials subject to 5 U.S.C. 552(a)(2) and (5). The head of an op-

erating unit may, with the approval of the Assistant Secretary for Administration, establish for his organization a separate place for making the materials subject to 5 U.S.C. 552(a)(2) and (5) available to the public for inspection and copying, and publish appropriate rules applicable thereto approved by the Assistant Secretary for Administration.

d. The officials responsible for determining the materials to be available for public inspection and copying under paragraph 5.02a. of this subsection, shall consider, among other factors, in promulgating the published rules or in making such determinations:

1. That those matters which fall within one or more of the exemptions contained in 5 U.S.C. 552(b) are not required to be made available. Nonetheless, they may be made available in any particular respect if it is determined that this would better serve the public interest.

2. That they may, to the extent required to prevent a clearly unwarranted invasion of personal privacy, delete identifying details from an opinion, statement of policy, interpretation, staff manual or instruction, or other materials, when it is made available or published. However, in each case the justification for the deletion shall be explained fully in writing. Such action is to be taken in order to provide the public with those informational materials called for under 5 U.S.C. 552(a)(2), while at the same time protecting the medical, family, or other personal privacy rights of the individuals involved in such agency materials. Agency explanations for deletions of identifying details should provide such information as can be furnished without defeating the purpose of the deletion provision. When an agency has a number of recurring deletion situations, it may in its implementing rules or other public notice specify the applicable reasons for such deletions, and cite the rule in the preamble to each of the covered documents, rather than contain the complete explanation in each document.

3. That distinction should be made between those materials (a) which do and which do not affect any member of the public, and (b) which are and which are not to be relied upon, used or cited as precedent by the agency against any private person or party. Those materials specified in 5 U.S.C. 552(a)(2) which affect the public and which have precedential effect shall be made available for inspection and copying, and also included in the index, as provided in this order. However, since the basic purpose of this section of the Act is to disclose to the interested members of the public essential information which will enable them to deal effectively and knowingly with an agency, materials which provide such information

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should be included in the appropriate facilities.

4. That an advisory interpretation made by an agency on a specific set of facts which is requested by and addressed to a particular person need not be made generally available under paragraph 5.02a. of this subsection if it is not to be cited or relied upon by any official of the agency as a precedent in the disposition of other cases. Nonetheless, if it may serve any useful public purpose, any such interpretation may be made publicly available upon the deletion of identifying details to the extent necessary to protect personal privacy.

5. That the agency is not precluded from using as precedent against any affected person those matters specified in subparagraphs 1.-3. of paragraph 5.02a of this subsection as to which a person has actual and timely notice of the terms thereof, even though they have not been indexed and either made available or published. If the agency practice is to furnish such notices, it is more desirable that it do so in addition to, rather than instead of, indexing and making them publicly available hereunder, in recognition of the purpose of 5 U.S.C. 552(a)(2) to make the end product materials of the administrative process available to the public.

6. That matters which are published in the FEDERAL REGISTER in accordance with 5 U.S.C. 552(a)(1) are not required to be made available under 5 U.S.C. 552(a)(2) for public inspection and copying nor need they be indexed (the FEDERAL REGISTER has its own index). However, to the extent that it would be useful and practicable to index and provide such published information to the public for ready reference, it should be included.

7. That an index provides sufficient identifying information for the public if a person who exercises diligence may familiarize himself with the materials through use of the index.

8. That an alternative to making materials available to the public for inspection and copying is to promptly publish and offer them for sale to the public. Such published materials, however, are subject to the indexing requirement. If it would help the public and it is practical to do so, a copy of such published materials should also be made available in any facilities established for public inspection, and if permissible, copies of the publications should be made available for sale therein.

9. That materials required to be made available or published under 5 U.S.C. 552(a)(2), but which were adopted or issued by an agency prior to July 4, 1967, may at any time be used, relied upon or cited as precedent by the agency irrespective of whether they are listed in the agency's index. Officials, however, may, to the extent they deem it practicable and helpful to the

public, also index such materials in whole or in part.

.03 *Availability of records upon request* (5 U.S.C. 552(a)(3), (4), and (6) of the Act).

a. The Assistant Secretary for Administration shall cause to be published in the FEDERAL REGISTER rules stating the time, place, fees and procedures to be followed, with respect to making records of the Department promptly available to any person requesting them, as provided in 5 U.S.C. 552 (a) (3), (4), and (6).

b. The rules published in the FEDERAL REGISTER pursuant to paragraph 5.03a. of this subsection shall, insofar as is practicable, be complete, precise, and workable, suitable for the information of agency personnel and the public alike, and shall include provisions, among other matters, for the following:

1. Information as to the place to make requests, when requests will be deemed received by the Department for purposes of the time limits contained in 5 U.S.C. 552(a)(6), the timely handling of requests, and the making of initial determinations concerning the availability of the records requested.

2. Timely notice to the requester, as applicable, that a requested record does not exist, has been disposed of as provided by law, or is not in the possession or control of the Department.

3. A procedure whereby the time limits for responding to requests for records or appeals from denials may be extended, as authorized by 5 U.S.C. 552(a)(6)(B), and wherein a failure of the agency to respond in a timely manner may be considered a denial of the request.

4. Consultation with other operating units or offices within the Department, or with other Federal executive agencies, when there is a mutual agency interest or concern in the record or its contents and there is a question as to its availability. The determination as to availability should be made by the predominantly interested agency, if there is one. When a record requested from the Department is the exclusive concern of another executive agency, the request shall be promptly referred to that other agency, and the requester so notified.

5. A procedure for administrative appeal of a request for a record initially denied in whole or in part. The appeal procedure shall include provisions which insure that: (i) The requester may file an appeal, in writing, within thirty days of receipt of an initial denial; (ii) an appeal shall be considered received when properly addressed to the General Counsel; (iii) appeals shall be decided without right of the requester for a personal appearance, oral argument, or hearing; (iv) timely decisions on appeals or other notices concerning them shall be made in writing, and communicated to the requester;

(v) if the decision is wholly or partly in favor of the requester, the General Counsel shall make the particular records or information available to the requester or order that such be done; and to the extent that the decision is adverse to the requester, it shall briefly state the reason for the decision and the identity of the official responsible for making it, (vi) whenever applicable, requesters shall be effectively notified of their right to seek judicial review.

6. A schedule of fees as authorized by the Act, with procedures which (i) put requesters of records on timely notice as to substantial search and copying fees estimated to be incurred with respect to a request; (ii) which attempt to insure that requesters pay the chargeable fees for work to be done; (iii) which provide for appropriate waiver or reduction of fees; and (iv) which do not intend to discourage requests for records under the Act. Work, services, publications, or documents which the agency as part of its regular mission has been performing or producing or will be performed or produced for members of the public or for those who are engaged in the transaction of official business of or with the Government, without charge, by user charge, or by publication or subscription charge, are to be distinguished from those records properly requested under 5 U.S.C. 552(a)(3) and the fees charged thereunder.

c. The officials designated in subsections 4.01 and 4.02 of this order who are responsible for initially determining whether any records properly requested under the Act may be made available, shall include in their consideration:

1. Whether the records are of the type referred to in subsection 3.01 of this order, and the request is to be handled in accord with the policy set forth therein;

2. Whether the records are subject to 5 U.S.C. 552(a) (1), (2), or (5) and have been otherwise made publicly available pursuant to paragraphs 5.01a or 5.02a of this section;

3. Whether the requester has complied with the published rules covering the making of requests and the payment of fees;

4. Whether the records or information contained in them are matters which fall within one or more of the exemptions contained in 5 U.S.C. 552(b), and if so, whether they are not to be disclosed or whether, if such discretion exists, it would nevertheless be in the public interest to make the record or information available in whole or in part;

5. Whether any reasonably segregable portion of the record can be disclosed after deletion of the portions which it is determined should not be disclosed.

d. The officials who establish a facility as provided in paragraph 5.02c of this section may utilize the facility to:

1. Receive and assist in processing requests for records;

2. Receive from officials the requested records which are made available, maintain custody of them and supervise their inspection and copying by requesters;

3. Arrange for making certified and other copies of available records;

4. Collect and account for fees established for services connected with the requests;

5. Return records after inspection to their place of custody;

6. Act as a central communication center between the requesters and the organizations involved in record keeping and officials making determinations as to their availability; and

7. Provide reasonable assistance to persons requesting records, including explanations of the applicable procedure and other rules, and making referrals to sources of information available under regular informational programs of the Department.

e. The Assistant Secretary for Administration shall establish such standard forms, procedures and instructions as he deems necessary for processing requests for records, maintaining records of related expenditures, and obtaining information for the Departmental report required by 5 U.S.C. 552(d).

.04 *Special review requirements.*—a. The General Counsel or one of his designees shall be consulted before any initial denial is issued.

b. The Director of the Office of Public Affairs or his designee shall be informed before any decision on an appeal from an initial denial is issued.

c. As provided in Part B, Chapter IV, subsection 5.06f. of the Department's Handbook of Security Regulations and Procedures, appeals of initial denials based, even in part, on the ground that the matter is exempted from disclosure under 5 U.S.C. 552(b)(1) (classified information) shall be referred to the Departmental Information Security Program Committee. That Committee shall conduct a declassification review and determine if the record(s) involved may be made available to the public.

d. Whenever, on appeal from an initially denied request, the General Counsel and the concerned Secretarial Officer or operating unit head cannot agree on whether applicable exemptions should be waived, as provided in subsection .03c.4. of this section, the matter shall be promptly referred to the Secretary for resolution.

.05 *Annual Report* (5 U.S.C. 552(d) of the Act).

a. The Assistant Secretary for Administration shall prepare and transmit to the Congress on or before March 1 of each year the annual report required by the Act.

b. To assist in the preparation of the report, each official specified in subsection 4.01 of this order, shall, no later than Janu-

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ary 31 of each year, provide the Assistant Secretary for Administration with the information specified in the Act and such other information as he may require.

Sec. 6. Supplementary rules. .01 The Secretary may from time to time issue such supplementary rules or instructions as he deems appropriate to carry out the purposes of this order.

.02 Each duly authorized official may issue rules covering his respective area of responsibility designed to implement this order, and which are consistent herewith and with any rules issued by the Assistant Secretary for Administration.

Sec. 7. Effect on other orders. This order supersedes Department Administrative Order 205-12 of June 29, 1967, as amended. Any other prior orders, rules, or instructions, or parts thereof, the provisions of which are inconsistent or in conflict with the provisions of this order, are hereby constructively amended or superseded.

MARCH 6, 1975.

FREDERICK B. DENT,
Secretary of Commerce.

[40 FR 11553, Mar. 12, 1975, as amended at 46 FR 62245, Dec. 23, 1981]

APPENDIX B—FREEDOM OF INFORMATION PUBLIC FACILITIES AND ADDRESSES FOR REQUESTS FOR RECORDS

The following public reference facilities have been established within the Department of Commerce (a) of the public inspection and copying of materials of particular units of the Department under 5 U.S.C. 552(a)(2), or determined to be available for response to requests made under 5 U.S.C. 552(a)(3); (b) for furnishing information and otherwise assisting the public concerning Departmental operations under the Freedom of Information Act; and (c) as addresses, in some instances, for the receipt and processing of requests for records under 5 U.S.C. 552(a)(3). Units having separate mailing addresses are noted below. Requests should be addressed to the unit which the requestor knows or has reason to believe has possession or control or has primary concern with the records sought. Otherwise, requests should be addressed to the Central Reference and Records Inspection Facility.

Department of Commerce Freedom of Information Central Reference and Records Inspection Facility, Room 6628, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, D.C. 20230. Phone (202) 377-4217. This facility serves the Office of the Secretary and all other units of the Department not identified below as explained at 15 CFR 4.4 (c) and (d).

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Bureau of the Census, Freedom of Information Request Control Desk, Room 2428, Federal Building 3, Washington, DC 20233.

Bureau of Economic Analysis, Public Reference Facility, Room 1115, Tower Building, 1401 K Street, NW., Washington, DC. Mailing address: Freedom of Information Control Desk, Office of Administration, Office of Economic Affairs, Room 4079 Herbert Hoover Building, 14th Street between Constitution and Pennsylvania Avenues NW., Washington, DC 20230. Phone 377-3037.

Economic Development Administration, Freedom of Information Records Inspection Facility, Room 7001, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230. Phone (202) 377-4687. Mailing address of Regional EDA offices:

Philadelphia Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Federal Reserve Bank Building, Room 600, 105 North 7th Street, Philadelphia, Pennsylvania 19106.

Atlanta Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Suite 700, 1365 Peachtree Street, NE., Atlanta, Georgia 30309.

Denver Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Suite 300, 333 West Colfax, Denver, Colorado 80202.

Chicago Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, 175 West Jackson Boulevard, Suite A-1630, Chicago, Illinois 60604.

Seattle Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, 1700 Westlake North, Suite 500, Seattle, Washington 98109.

Austin Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, American Bank Tower, Suite 600, 221 West Sixth Street, Austin, TX 78701.

International Trade Administration, Freedom of Information Records Inspection Facility, Room 4001B, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230. Phone (202) 377-3031.

Minority Business Development Administration, Freedom of Information Office, Room 5089, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, D.C. 20230. Phone (202) 377-5045.

National Bureau of Standards, Freedom of Information Records Inspection Facility,

Office of the Secretary, Commerce

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Room E106, Administration Building, Gaithersburg, Maryland. Phone (301) 921-3444. Mailing address: National Bureau of Standards, Freedom of Information Request Control Desk, Room A1105, U.S. Department of Commerce, Washington, DC 20234 (Gaithersburg, Maryland).

National Oceanic and Atmospheric Administration, Public Reference Facility, Freedom of Information Office (MB/IMS33), Room 4225, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230

National Technical Information Service, Freedom of Information Request Control Desk, 5285 Port Royal Road, Springfield, Virginia 22161. Phone (703) 487-4634.

National Telecommunications and Information Administration, Freedom of Information Request Control Desk, Room 4717, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20504. Phone (202) 377-1816.

Patent and Trademark Office, Freedom of Information Records Inspection Facility, Room 12C08, Building ge a06se0.0662, Crystal Gateway, Arlington, Virginia. Phone (703) 557-4035. Mailing address: Patent and Trademark Office, Freedom of Information Request Control Desk, Box 50, Washington, DC 20231.

United States Travel and Tourism Administration, Freedom of Information Request Control Desk, Room 1524, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230. Phone (202) 377-3811.

(5 U.S.C. 552, as amended by Pub. L. 93-502 and Pub. L. 94-409; 5 U.S.C. 553; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950) [49 FR 35084, Sept. 6, 1984]

APPENDIX C—OFFICIALS AUTHORIZED TO MAKE INITIAL DENIALS OF REQUESTS FOR RECORDS

The following officials of the Department have been delegated authority to initially deny requests for records of their respective units for which they are responsible. (The listings are subject to change because of organizational changes or new delegations. Accordingly, the Chief, Information Management Division, is specifically authorized to amend or revise this Appendix from time to time in order to reflect such changes).

Office of the Secretary:

Office of the Deputy Secretary:
Associate Deputy Secretary
Office of Business Liaison:
Director

Office of Consumer Affairs:

Director
Office of the Assistant Secretary for Congressional and Intergovernmental Affairs:
Deputy Assistant Secretary for Congressional Affairs
Office of the Inspector General:
Counsel to the Inspector General
Deputy Counsel to the Inspector General
Office of the General Counsel:
Deputy General Counsel
Assistant General Counsel for Administration
Director, Office of Intelligence Liaison
Office of Public Affairs:
Deputy Director
Office of the Under Secretary for Economic Affairs:
Administrative Officer

Office of the Assistant Secretary for Administration:

Office of the Administrative Law Judge:
Office Manager
Office of Finance and Federal Assistance:
Director
Office of Management Analysis and Control:
Director
Office of the Director for Planning, Budget and Evaluation:
Director
Office of Budget:
Director
Office of Program Planning and Evaluation:
Director
Office of the Director for Personnel and Civil Rights:
Director
Office of Personnel:
Director
Office of Personnel Operations:
Director
Office of Civil Rights:
Director
Office of the Director for Management and Information Systems:
Director
Chief, Information Management Division
Office of the Director for Procurement and Administration Services:
Director
Office of Procurement Management:
Director
Office of Procurement Operations:
Director
Office of Administrative Services Operations:
Director
Office of Buildings Management:
Director
Office of Security:
Director
Office of Small and Disadvantaged Business Utilization:

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Director

Bureau of the Census:

Associate Director for Management Services

Bureau of Economic Analysis:

Deputy Director

Economic Development Administration:

Chief Counsel

Assistant Chief Counsel

Regional Counsels

International Trade Administration:

International Economic Policy:

Director, Office of Policy Coordination

Director, Office of Multilateral Affairs

Director, Office of the European Community

Director, Office of the Non-European Community Europe

Director, Office of the USSR and Eastern Europe

Director, Office of North America

Director, Office of Mexico and the Caribbean Basin

Director, Office of South America

Director, Office of the Peoples Republic of China and Hong Kong

Director, Office of Japan

Director, Office of the Pacific Basin

Director, Office of Africa

Director, Office of the Near East

Director, Office of South Asia

Trade Administration:

Hearing Commissioner

Deputy to the Deputy Assistant Secretary for Import Administration (Policy)

Director, Office of Antiboycott Compliance

Director, Office of Export Enforcement

Director, Office of Industrial Resource Administration

Director, Office of Export Administration

Deputy Director, Office of Export Administration

Director, Foreign Trade Zones Staff

Director, Statutory Import Programs Staff

Director, Office of Investigations

Director, Office of Compliance

Director, Office of Policy

Trade Development:

Deputy Assistant Secretary for Trade Adjustment Assistance

Director, Office of Planning and Coordination

Director, Office of World Fairs and International Expositions

Director, Office of Trade Finance

Director, Office of Industrial Assessment

Director, Office of Trade and Industrial Information

Director, Office of Program and Resource Management

Director, Office of Textiles and Apparel

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Director, Office of Aerospace Policy and Analysis

Director, Office of Aerospace Market Development

Director, Office of Automotive Industry Affairs

Director, Office of Consumer Goods

Director, Office of Chemicals and Allied Products

Director, Office of Energy

Director, Office of Metals, Minerals and Primary Commodities

Director, Office of Forest Products and Domestic Construction

Director, Office of General Industrial Machinery

Director, Office of Special Industrial Machinery

Director, Office of International Major Projects

Director, Office of Computers and Business Equipment

Director, Office of Components and Related Equipment

Director, Office of Telecommunications

Director, Office of Instrumentation on Medical Sciences

Director, Office of Service Industries

Director, Office of Export Trading Company Affairs

U.S. and Foreign Commercial Service:

Director, Office of Foreign Service Personnel

Director, Office of Planning and Management

Director, Office of Foreign Operations

Director, Office of Domestic Operations

Director, Office of Event Management and Support Services

Director, Office of Trade Information Services

Director, Office of Commercial Communications

Administration:

Director, Office of Organization and Management Support

Director, Office of Personnel

Director, Office of Financial Management

Director, Office of Information Resources Management

Deputy Under Secretary for International Trade:

Director, Office of Public Affairs

Minority Business Development Agency:

Freedom of Information Officer

National Bureau of Standards:

Deputy Director of Administration

National Oceanic and Atmospheric Administration:

Deputy Administrator

Associate Administrator

Director, Office of Public Affairs

Office of the Secretary, Commerce

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Director, NOAA Corps
Assistant Administrator for Ocean Services
and Coastal Zone Management
Assistant Administrator for Fisheries
Assistant Administrator for Weather Service
Assistant Administrator for Environmental
Satellite, Data, and Information Service
Assistant Administrator for Oceanic and Atmospheric Research
Director, Environmental Research Laboratories
Director, Office of Administrative and Technical Services
Director, Regional Administrative Support
Center Operations Office
Director, National Capital Administrative
Support Center
Director, Eastern Administrative Support
Center
Director, Central Administrative Support
Center
Director, Mountain Administrative Support
Center
Director, Western Administrative Support
Center

National Technical Information Services:

Director
Chief, Management Analysis Division

National Telecommunications and Information Administration:

Deputy Assistant Secretary
Chief Counsel

Patent and Trademark Office:

Solicitor of Patents
Deputy Solicitor of Patents

United States Travel and Tourism Administration:

Under Secretary
Director, Office of Management and Administration

(5 U.S.C. 552, as amended by Pub. L. 93-502
and Pub. L. 94-409; 5 U.S.C. 553; 5 U.S.C.
301; Reorganization Plan No. 5 of 1950)
[49 FR 35085, Sept. 6, 1984]

PART 4a—CLASSIFICATION, DECLASSIFICATION AND PUBLIC AVAILABILITY OF NATIONAL SECURITY INFORMATION

Subpart A—Classification of National Security Information

Sec.

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- 4a.2 Director, Office of Security.
- 4a.3 Classification levels.
- 4a.4 Classification authority.

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- 4a.5 Duration of classification.

Subpart B—Declassification

- 4a.6 General.
- 4a.7 Systematic review for declassification.
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- 4a.9 Requests under the Privacy Act and the Freedom of Information Act involving classified records.
- 4a.10 Presidential information.
- 4a.11 Foreign government information.
- 4a.12 Public availability of declassified information.

Subpart C—Access to Classified Information

- 4a.13 Access by persons outside the executive branch.
- 4a.14 Access by industrial, educational, and commercial entities.
- 4a.15 Access by historical researchers and former presidential appointees.
- 4a.16 Access by foreign nationals, foreign governments, international organizations and immigrant aliens.

AUTHORITY: Sec. 5.3(b), E.O. 12356, 47 FR 14874, April 6, 1982, 47 FR 15557, April 12, 1982.

SOURCE: 48 FR 20040, May 4, 1983, unless otherwise noted.

Subpart A—Classification of National Security Information

§ 4a.1 General.

Executive Order 12356 provides the only basis for classifying information within the Department of Commerce, except as provided in the Atomic Energy Act of 1954. The policy of the Department of Commerce is to make information concerning its activities available to the public consistent with the need to protect the national defense or foreign relations as required by the interests of the United States and its citizens. Accordingly, security classification shall be applied only to protect the national security.

§ 4a.2 Director, Office of Security.

The Director is responsible for (a) acting on all suggestions, complaints, and appeals not otherwise resolved, concerning the implementation and administration of E.O. 12356 and implementing directives, and (b) deciding all appeals from denials of requests for national security information under the Mandatory Review provision of

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E.O. 12356, when the initial denial was based on continued classification under the Order. When acting on such appeals the Director shall confer, as necessary, with the Offices of the General Counsel, Information Management, and Personnel. The Director may solicit advice from various operating units as required. All suggestions, complaints, or appeals should be addressed to the Director, Office of Security, Room 5044, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

§ 4a.3 Classification levels.

Information may be classified as national security information by a designated original classifier of the Department when it is determined that the information concerns one or more of the categories prescribed in E.O. 12356 and when the unauthorized disclosure of the information, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security. The levels established by E.O. 12356 (Top Secret, Secret, and Confidential) are the only terms which may be applied to national security information. Except as provided by statute, no other terms shall be used within the Department of Commerce in conjunction with any of the three classification levels.

§ 4a.4 Classification authority.

Authority to originally classify information as Secret or Confidential may be exercised only by the Secretary of Commerce and by officials to whom such authority is specifically delegated. No official of the Department of Commerce is authorized to originally classify information as Top Secret.

§ 4a.5 Duration of classification.

Information shall remain classified as long as its unauthorized disclosure would result in damage to the national security. When it can be determined a specific date or event for declassification shall be set by the original classification authority at the time the information is originally classified. Automatic declassification markings applied under predecessor executive

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orders shall remain valid unless the classification is extended by an authorized declassification authority. Information classified under predecessor orders and marked for declassification review shall remain classified until reviewed for declassification under the provisions of E.O. 12356 governing systematic review or mandatory review for declassification.

Subpart B—Declassification

§ 4a.6 General.

Information that continues to meet the classification requirements prescribed in E.O. 12356 despite the passage of time will continue to be safeguarded. However, information which is properly classified at the time it is developed may not necessarily require protection indefinitely. National security information over which the Department of Commerce exercises final classification jurisdiction shall be declassified or downgraded as soon as national security considerations permit. When information is determined to be no longer damaging to the national security, it may continue to be exempt from public disclosure by law. If so, when the information is declassified the declassification authority shall indicate that all or portions of the information become FOR OFFICIAL USE ONLY and shall cite the authority which permits nondisclosure.

§ 4a.7 Systematic review for declassification.

Classified information constituting permanently valuable records of the Government, as defined by U.S.C. 2103, that is in the possession and control of the Department of Commerce or of the Archivist of the United States, shall be systematically reviewed for declassification. This review shall be in accordance with systematic review guidelines authorized by the Secretary of Commerce.

§ 4a.8 Mandatory review for declassification.

(a) *Requests.* Classified information under the jurisdiction of the Department of Commerce shall be reviewed for declassification upon receipt of a

request by a United States citizen or permanent resident alien, a Federal agency, or a state or local government. A request for mandatory review of classified information shall be submitted in writing and describe the information with sufficient specificity to locate it with a reasonable amount of effort. Request shall be submitted to the Director, Office of Security, U.S. Department of Commerce, Room 5044, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

(b) *Processing requirements.* (1) The Director, Office of Security, shall acknowledge receipt of the request directly to the requester. When a request does not satisfy the conditions of paragraph (a) of this section, the requester shall be notified that unless additional identifying information is provided, no further action will be taken. The request shall be forwarded to the operating unit or office which originated the information or which has primary interest in the subject matter. The unit or office assigned action shall review the information within twenty working days as prescribed below.

(2) The action office shall determine whether, under the declassification provisions of the Department of Commerce National Security Information Manual, the entire document or portions thereof may be declassified. The action office shall also determine whether, if the document or portions are declassified, withholding the information is otherwise warranted under applicable statutes. Declassification of the information shall be accomplished by a designated declassification authority. Upon declassification the information shall be remarked. If the information may not be released in whole or in part, the reviewing official shall provide the reasons for denial by citing the applicable provision of section 1.3 of E.O. 12356. When the classification is a derivative decision based on classified source material of another Federal agency, the action office shall provide the information to the originator for review.

(3) The action office shall also determine if declassified information is otherwise available for public release under the Freedom of Information

Act. If the information is not releasable, the reviewing official shall advise the Director, Office of Security, that the information has been declassified but that it is exempt from disclosure, citing the appropriate exemption of the Freedom of Information Act and applicable regulations.

(4) If the request for declassification is denied in whole or in part, the requester shall be notified of the right to appeal the determination within sixty days and of the procedures for such an appeal. If declassified information remains exempt from disclosure under the Freedom of Information Act, the requester shall be advised of those appellate procedures. All denials of information under the Freedom of Information Act must be approved by the Office of the Assistant General Counsel for Administration.

(c) *Fees.* If the request requires the rendering of services for which fees may be charged, the unit assigned action may calculate the anticipated amount of fees to be charged and ascertain the requester's willingness to pay the allowable charges as a precondition to taking further action on the request in accordance with § 4.9 of Department of Commerce Freedom of Information Act rules and § 4b.11 of the Department's Privacy Act rules.

(d) *Right of Appeal.* (1) A requester may appeal to the Director, Office of Security, when the requested information is not declassified and released in whole. The Director shall determine, within thirty days after receipt of an appeal, whether continued classification of the requested information is required in whole or in part, notify the requester of his determination, and make available to the requester any information determined to be releasable. If continued classification is required under the provisions of this manual, the requester shall be notified of the final determination and of the reasons for denial.

(2) During the declassification review of information under appeal the Director, Office of Security, may overrule previous determinations in whole or in part when, in his judgment, continued protection in the interest of national security is no longer required. If the Director determines

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that the information no longer requires classification, it shall be declassified and, unless it is otherwise exempt from disclosure, released to the requester. The Director shall advise the original reviewing Commerce office or unit of his decision.

§ 4a.9 Requests under the Privacy Act and the Freedom of Information Act involving classified records.

(a) The Freedom of Information Act (FOIA), Title 5 U.S.C. 552(b)(1) and the Privacy Act of 1974 (PA), Title 5 U.S.C. 552a(k)(1), authorize withholding of records from public availability which are "(1) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (2) are in fact properly classified pursuant to such Executive order."

(b) Under the FOIA a determination on an initial request must be made within ten working days after receipt of the request. A determination on an appeal to an initial denial must be made within twenty working days after receipt of an FOIA appeal; or for a PA appeal, within thirty working days. Time limits are mandatory for an FOIA request, but are permissive for a PA request. Except for unusual circumstances, failure to make a determination within the stated time limits means that a requester has exhausted the administrative remedies and may bring suit immediately.

(c) Persons who request information under the provisions of these Acts, and whose requests are denied on appeal, may petition the courts to enjoin the Department of Commerce from withholding the record and, in this event, burden is on the Department of Commerce to sustain its actions.

(d) To assure that PA/FOIA requests involving classified records are subjected to a thorough classification review and that a response is made within the specified time limits, the procedures in paragraphs (e) and (f) shall apply as well as those of DAO 205-12 "Public Information," DAO 205-14 "Processing Requests Under the Freedom of Information Act," and

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DAO 205-15 "Implementing the Privacy Act of 1974."

(e) Initial requests involving classified records:

(1) The office determined to have primary interest shall conduct a declassification review of the information as prescribed in § 4a.8(b) (2), (3), and (4).

(2) If the information is subsequently declassified, the action office shall consult with the Office of the Assistant General Counsel for Administration to determine releasability with consideration only for the legality of release within the purview of PA/FOIA.

(3) If the record warrants continued classification, the action office shall coordinate with the Office of the Assistant General Counsel for Administration and so advise the requester, and further advise the requester of the right of appeal.

(4) If the classification review cannot be completed within the prescribed time limit, due to unusual circumstances, the action office shall advise the requester. An extension of time shall be arranged in accordance with the FOIA and implementing Commerce PA/FOIA rules.

(f) Receipt of an appeal for reconsideration of denial of a classified record under PA/FOIA: Appeals under this section shall be addressed to the General Counsel who shall refer the record(s) to the Director, Office of Security, for a declassification review. The Director may overrule previous determinations in whole or in part when, in his judgment, continued protection in the interest of national security is no longer required. If the information under review no longer requires classification, it shall be declassified. The Director shall advise the General Counsel of his decision.

§ 4a.10 Presidential information.

Information originated by the President, by the White House Staff, by committees, commissions, or boards appointed by the President, or by others specifically providing advice and counsel to a President or acting on behalf of a President is exempted from the provisions of mandatory

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review for declassification, except as consistent with applicable laws that pertain to presidential papers or records.

§ 4a.11 Foreign government information.

Requests for mandatory review for declassification of foreign government information shall be processed as prescribed in § 4a.8(b). Consultation with the foreign source of the information through appropriate channels may be required prior to final action on the request.

§ 4a.12 Public availability of declassified information.

A fundamental policy of the Department of Commerce is to make information available to the public to the maximum extent permitted by law. Information which is declassified, for any reason, loses its protective status in the interest of national security. Accordingly, declassified information shall be handled in every respect on the same basis as all other unclassified information.

Subpart C—Access to Classified Information

§ 4a.13 Access by persons outside the Executive branch.

Department of Commerce classified information may be made available to persons outside the Executive Branch provided that (a) they are engaged in historical research projects or previously have occupied policy-making positions to which they were appointed by the President, or (b) the information is necessary for their performance of a function related to a contract or other agreement with the U.S. Government. The Director, Office of Security, shall determine, prior to the release of classified information under this provision, the propriety of such action in the interest of national security and obtain assurance of the recipient's trustworthiness and need to know.

§ 4a.14 Access by industrial, educational and commercial entities.

Bidders, contractors, grantees, educational, scientific or industrial organi-

zations may receive classified information under the procedures prescribed in the Department of Defense Industrial Security Manual.

§ 4a.15 Access by historical researchers and former Presidential appointees.

(a) Persons who are engaged in historical research projects or who have previously occupied policy-making positions to which they were appointed by the President may be authorized access to classified information provided that the head of the component with classification jurisdiction over the information:

(1) Makes a written determination that access is consistent with the interests of national security;

(2) Is assured by the Director, Office of Security, that the requestors have an appropriate determination of trustworthiness as a precondition to access;

(3) Obtains written agreements from requestors to safeguard the information to which they are given access in accordance with these regulations;

(4) Obtains written consent to a review by the Department of Commerce of their resultant notes and manuscripts for the purpose of determining that no classified information is contained therein; and

(5) Limits access granted to former Presidential appointees to items that the person originated, reviewed, signed, or received while serving as a Presidential appointee.

(b) The material requested should be clearly identified so that it can be located and compiled with a reasonable amount of effort. If the access requested by historical researchers or former Presidential appointees requires the rendering of services for which fair and equitable fees may be charged, the requestor shall be notified.

(c) The provisions of this section apply only to classified information, or any part of it, originated by the Department of Commerce or information that is now in the sole custody of the Department. Otherwise, the researcher shall be referred to the classifying agency. Operating units providing information under this section shall

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maintain custody of classified information at a Commerce facility.

§ 4a.16 Access by foreign nationals, foreign governments, international organizations and immigrant aliens.

Foreign nationals employed by the Department of Commerce may be granted access to classified information originated within the Department only for the specific classified project to which they are assigned and only after they have met those requirements set forth in DAO 207-3, "Security Requirements for Research Associates, Guest Workers and Trainees," and Appendix B of DAO 207-4, "Security and Suitability Investigations of Personnel." If a need for access by foreign nationals (other than employees) is indicated, the Director, Office of Security, shall be consulted for decision on a case-by-case basis.

PART 4b—PRIVACY ACT

Sec.

- 4b.1 Purpose and scope.
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APPENDIX A—OFFICIALS TO RECEIVE INQUIRIES, REQUESTS FOR ACCESS AND REQUESTS FOR CORRECTION OR AMENDMENT

APPENDIX B—OFFICIALS TO RECEIVE APPEALS FROM ADVERSE DETERMINATION ON CORRECTION OR AMENDMENT

APPENDIX C—SYSTEMS OF RECORDS NOTICED BY OTHER AGENCIES AND APPLICABLE TO RECORDS OF THE DEPARTMENT AND APPLICABILITY OF THIS PART THERETO

APPENDIX D—FACSIMILE OF OFFICIAL FORM FOR INQUIRIES AND REQUESTS

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AUTHORITY: 5 U.S.C. 552a; 5 U.S.C. 553; 5 U.S.C. 552; 5 U.S.C. 301; 44 U.S.C. 3101; Reorganization Plan No. 5 of 1950, unless otherwise noted.

SOURCE: 40 FR 45621, Oct. 2, 1975; 40 FR 50662, Oct. 30, 1975; 40 FR 51168, Nov. 3, 1975, unless otherwise noted.

§ 4b.1 Purpose and scope.

(a) The purpose of this part is to establish policies and procedures for implementing the Privacy Act of 1974 (Pub. L. 93-579), particularly 5 U.S.C. 552a as added by the Act. The main objectives are to facilitate full exercise of rights conferred on individuals under the Act and to ensure the protection of privacy as to individuals on whom the Department maintains records in systems of records under the Act. The Department accepts the responsibility to act promptly and in accordance with the Act upon receipt of any inquiry, request or appeal from a citizen of the United States or an alien lawfully admitted for permanent residence into the United States, regardless of the age of the individual. Further, the Department accepts the obligations to maintain only such information on individuals as is relevant and necessary to the performance of its lawful functions, to maintain that information with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness in determinations made by the Department about the individual, to obtain information from the individual to the extent practicable, and to take every reasonable step to protect that information from unwarranted disclosure. The Department will maintain no record describing how an individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity. An individual's name and address will not be sold or rented by the Department unless such action is specifically authorized by law; however, this provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(b) This part applies to all units in the Department in order to assure the maximum amount of uniformity and consistency within the Department in its implementation of the Act. The units of the Department may promulgate supplementary orders and rules not inconsistent with this part.

(c) The Assistant Secretary for Administration is delegated responsibility for maintaining this part, for issuing such orders and directives internal to the Department as are necessary for full compliance with the Act, and for effecting publication of all required notices concerning systems of records.

(d) Matters outside the scope of this part include the following:

(1) Requests under the Freedom of Information Act (5 U.S.C. 552) and Part 4 of this title;

(2) Requests involving information pertaining to an individual which is in a record or file but not within the scope of a system of records notice published in the FEDERAL REGISTER;

(3) Requests to correct a record where a grievance procedure is available to the individual either by regulation or by provision in a collective bargaining agreement with the Department or a unit of the Department, and the individual has initiated, or has expressed in writing the intention of initiating, such grievance procedure. An individual selecting the grievance procedure waives the use of the procedures in this part to correct or amend a record; and,

(4) Requests for employee-employer services and counseling which were routinely granted prior to enactment of the Act, including, but not limited to, test calculations of retirement benefits, explanations of health and life insurance programs, and explanations of tax withholding options.

(e) The selection of the appropriate method for processing an individual's request for records depends on the status or capacity of the individual, the wording of the request and the character of the records requested. The Department anticipates the following situations and will undertake processing as indicated:

(1) Requester is the individual to whom the record pertains and the requester expressly states only that the

request is under the Act—The request will be processed under the Act and this part;

(2) Requester is the individual to whom the record pertains and the requester expressly states only that the request is under the Freedom of Information Act—The request will be processed under the Freedom of Information Act and the Department's implementing regulations (Part 4 of this chapter);

(3) Requester is the individual to whom the record pertains and the requester expressly states that the request is under both the Act and the Freedom of Information Act—The request will be processed concurrently under both statutes and the Department's respective implementing regulations;

(4) Requester is the individual to whom the record pertains and the requester fails to specify whether the request is under the Act or the Freedom of Information Act or both—The Department will respond to the requester and ask for clarification of the requester's intention as to processing. The request will not be deemed to have been "received" for purposes of measuring time periods for response until the clarification actually has been received by the appropriate official of the Department; and,

(5) Requester (i) is not an individual or (ii) is an individual but not the individual to whom the record pertains or one asserting parentage or guardianship as permitted under the Act—The request will be processed under the Freedom of Information Act and the Department's implementing regulations or under other applicable procedures.

§ 4b.2 Definitions.

(a) All terms used in this part which are defined in 5 U.S.C. 552a shall have the same meaning herein.

(b) As used in this part:

(1) The term "Act" means the "Privacy Act of 1974," Pub. L. 93-579.

(2) The term "appeal" means the request by an individual that an initial denial of a request for correction or amendment by that individual be reviewed and reversed.

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(3) The term "Department" means the Department of Commerce.

(4) The term "inquiry" means either a request for general information regarding the Act and this part or a request by an individual (or that individual's parent or guardian) that the Department determine whether it has any record in a system of records which pertains to that individual.

(5) The term "person" means any human being and also shall include but not be limited to, corporations, associations, partnerships, trustees, receivers, personal representatives, and public or private organizations.

(6) The term "Privacy Appeals Officer" means those officials, identified in Appendix B to this part, who are authorized to receive and act upon appeals from an initial denial of a request for correction or amendment.

(7) The term "Privacy Officer" means those officials, identified in Appendix A to this part, who are authorized to receive and act upon inquiries, requests for access, and requests for correction or amendment.

(8) The term "request for access" means a request by an individual to see a record which is in a particular system of records and which pertains to that individual.

(9) The term "request for correction or amendment" means the request by an individual that the Department change (either by correction, amendment, addition or deletion) a particular record in a system of records which pertains to that individual.

(10) The term "unit of the Department" and "unit" means the office of the Secretary of Commerce and operating units of the Department as defined in Department Organization Order 1-1, "Mission and Organization of the Department of Commerce" (35 FR 19704, December 27, 1970).

§ 4b.3 Procedures for inquiries pertaining to individual records in a record system.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit an inquiry to the Department. The inquiry should be made either in person or by mail addressed

to the appropriate Privacy Officer identified in Appendix A to this part or to the official identified in the notification procedures paragraph of the systems of records notice published in the FEDERAL REGISTER. If an individual believes the Department maintains a record pertaining to that individual but does not know which system of records might contain such a record and/or which unit of the Department maintains the system of records, assistance in person or by mail will be provided at the first address listed in Appendix A to this part. The offices of Privacy Officers are open to the public between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday (excepting holidays).

(b) The processing of inquiries submitted by mail will be facilitated if the words "PRIVACY ACT INQUIRY" appear in capital letters on the face of the envelope.

(c) The Department has an official form for making inquiries and requests, a facsimile of which is Appendix D to this part. Its use is urged. Copies may be obtained by contacting any of the officials in Appendix A to this part. Copies also may be obtained by contacting any facility of the Department which offers direct services to the public. Please consult your telephone directory under the listing "United States Government—Commerce Department."

(d) If, for some reason, an individual is unable to use the Department's official form, the letter should bear the words "PRIVACY ACT INQUIRY" in capital letters at the top. If the inquiry is for general information regarding the Act and this part, no particular information is required. If the inquiry is a request that the Department determine whether it has, in a given system of records, a record which pertains to the individual, the following information should be submitted:

(1) Name of individual whose record is sought;

(2) Individual whose record is sought is either a U.S. citizen or an alien lawfully admitted for permanent residence;

(3) Identifying data that will help locate the record (for example, maiden

name, occupational license number, period or place of employment, etc.);

(4) Record sought, by description and by record system name, if known;

(5) Action requested (that is, send information on how to exercise rights under the Act; does requested record exist; access to requested record; or copy of requested record);

(6) Copy of court guardianship order or minor's birth certificate, as provided in § 4b.4(f)(3), but only if requester is guardian or parent of individual whose record is sought;

(7) Requester's name (printed), signature, address, and telephone number (optional);

(8) Date; and,

(9) Certification of request by notary or other official, but only if (i) request is for notification that requested record exists, for access to requested record or for copy of requested record; (ii) record is not available to any person under 5 U.S.C. 552; and (iii) requester does not appear before an employee of the Department for verification of identity.

The Department reserves the right to require compliance with the identification procedures appearing at § 4b.4(f) where circumstances warrant.

(e) Any inquiry which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in paragraphs (b) and (d) of this section will be so addressed and marked by Department personnel and forwarded immediately to the responsible Privacy Officer. An inquiry which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring time periods for response until actual receipt by the Privacy Officer. In each instance when an inquiry so forwarded is received, the Privacy Officer shall notify the individual that his or her inquiry was improperly addressed and the date when the inquiry was received at the proper address.

(f) (1) Each inquiry received shall be acted upon promptly by the responsible Privacy Officer. Every effort will be made to respond within ten days (excluding Saturdays, Sundays and holidays) of the date of receipt. If a response cannot be made within ten days, the Privacy Officer shall send an

acknowledgment during that period providing information on the status of the inquiry and asking for such further information as may be necessary to process the inquiry. The first correspondence sent by the Privacy Officer to the requester shall contain the Department's control number assigned to the request, as well as a note that the requester should use that number in all future contacts in order to facilitate processing. The Department shall use that control number in all subsequent correspondence.

(2) If the Privacy Officer fails to send an acknowledgment within ten days, as provided above, the requester may ask the Privacy Appeals Officer, identified in Appendix B to this part, to take corrective action. No failure of a Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(g) An individual shall not be required to state a reason or otherwise justify his or her inquiry.

(h) Special note should be taken of the fact that certain agencies are responsible for publishing notices of systems of records having Government-wide application to other agencies, including the Department. The agencies known to be publishing these general notices and the types of records covered therein appear in Appendix C to this part. These general notices do not identify the Privacy Officers in the Department to whom inquiries should be presented or mailed. The provisions of this section, and particularly paragraph (a) of this section, should be followed in making inquiries with respect to such records. Such records in the Department are subject to the provisions of this part to the extent indicated in Appendix C to this part. The exemptions, if any, determined by the agency publishing a general notice shall be invoked and applied by the Department after consultation, as necessary, with that other agency.

§ 4b.4 Times, places, and requirements for identification of individuals making requests for access.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for perma-

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ment residence into the United States may submit a request for access to records to the Department. The request should be made either in person or by mail addressed to the responsible Privacy Officer identified in Appendix A to this part. The offices of Privacy Officers are open to the public between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday (excluding holidays).

(b) The Department has an official form for making requests, a facsimile of which is Appendix D to this part. Its use is urged. Copies may be obtained by contacting any of the officials listed in Appendix A to this part. Copies also may be obtained by contacting any facility of the Department which offers direct services to the public. Please consult your telephone directory under the listing "United States Government—Commerce Department."

(c) The processing of requests submitted by mail will be facilitated if the words "PRIVACY ACT REQUEST" appear in capital letters on the face of the envelope. If, for some reason, an individual is unable to use the Department's official form the letter should bear the words "PRIVACY ACT REQUEST" in capital letters at the top.

(d) Any request which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in paragraph (c) of this section will be so addressed and marked by Department personnel and forwarded immediately to the responsible Privacy Officer. A request which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring time periods for response until actual receipt by the Privacy Officer. In each instance when a request so forwarded is received, the Privacy Officer shall notify the individual that his or her request was improperly addressed and the date when the request was received at the proper address.

(e) If the request follows inquiry under § 4b.3 in connection with which the individual's identity was established by the Department, the individual need only indicate the record to which access is sought, give the Department control number assigned to

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the request, and sign and date the request. If the request is not preceded by an inquiry under § 4b.3, the procedures of either § 4b.3(c) or § 4b.3(d) of this part should be followed.

(f) The requirements for identification of individuals seeking access to records are as follows:

(1) *In person.* Each individual making a request in person shall be required to present satisfactory proof of identity. The means of proof, in the order of preference and priority, are:

(i) A document bearing the individual's photograph (for example, driver's license, passport or military or civilian identification card);

(ii) A document, preferably issued for participation in a federally sponsored program, bearing the individual's signature (for example, unemployment insurance book, employer's identification card, national credit card, and professional, craft or union membership card); and,

(iii) A document bearing neither the photograph nor the signature of the individual, preferably issued for participation in a federally sponsored program (for example, Medicaid card).

In the event the individual can provide no suitable documentation of identity, the Department will require a signed statement asserting the individual's identity and stipulating that the individual understands the penalty provision of 5 U.S.C. 552a(i)(3) recited in § 4b.12(a). For the convenience of the public, and in addition to the Privacy Officers listed in Appendix A to this part, most facilities which are open to the public and operated by the Department outside Metropolitan Washington, D.C. have employees authorized to determine the identity of an individual. However, such employees are not authorized to take any other action with respect to a request except to transmit the request to the responsible Privacy Officer. In order to avoid any unwarranted disclosure of an individual's records, the Department reserves the right to determine the adequacy of proof of identity offered by any individual, particularly when the request involves a sensitive record.

(2) *Not in person.* If the individual making a request does not appear in

person before a Privacy Officer or other employee authorized to determine identity, a certificate of a notary public or equivalent officer empowered to administer oaths must accompany the request under the circumstances prescribed in § 4b.3(d)(9). The Department's official form for requests contains a certificate. If, for some reason, the individual is unable to use the official form, the certificate within or attached to the letter must be substantially in accord with the following text:

City of _____

County of _____

(Name of individual), who affixed (his) (her) signature below in my presence, came before me, a (title), in and for the aforesaid County and State, this _____ day of _____, 19____, and established (his) (her) identity to my satisfaction.

My commission expires _____

(Signature)

(3) *Parents of minors and legal guardians.* An individual acting as the parent of a minor or the legal guardian of the individual to whom a record pertains shall establish his or her personal identity in the same manner prescribed in either paragraph (f)(1) or (2) of this section. In addition, such other individual shall establish his or her identity in the representative capacity of parent or legal guardian. In the case of the parent of a minor, the proof of identity shall be a certified or authenticated copy of the minor's birth certificate. In the case of a legal guardian of an individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, the proof of identity shall be a certified or authenticated copy of the court's order. For purposes of the Act, a parent or legal guardian may represent only a living individual, not a decedent. A parent or legal guardian may be accompanied during personal access to a record by another individual, provided the provisions of § 4b.5(f) are satisfied.

(g) When the provisions of this part are alleged to have the effect of impeding an individual in exercising his or her right to access, the Department will consider, from an individual making a request, alternative sugges-

tions regarding proof of identity and access to records.

(h) An individual shall not be required to state a reason or otherwise justify his or her request for access to a record.

§ 4b.5 Disclosure of requested information to individuals.

(a) (1) Each request received shall be acted upon promptly by the responsible Privacy Officer. Every effort will be made to respond within ten days (excluding Saturdays, Sundays and holidays) of the date of receipt. If a response cannot be made within ten days due to unusual circumstances, the Privacy Officer shall send an acknowledgment during that period providing information on the status of the request and asking for such further information as may be necessary to process the request. "Unusual circumstances" shall include circumstances where a search for and collection of requested records from inactive storage, field facilities or other establishments are required, cases where a voluminous amount of data is involved, instances where information on other individuals must be separated or expunged from the particular record, and cases where consultations with other agencies having a substantial interest in the determination of the request are necessary.

(2) If the Privacy Officer fails to send an acknowledgment within ten days, as provided above, the requester may ask the responsible Privacy Appeals Officer, identified in Appendix B to this part, to take corrective action. No failure of a Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(b) *Grant of access. (1) Notification.* An individual shall be granted access to a record pertaining to him or her, except where the provisions of paragraph (g)(1) of this section apply. The Privacy Officer shall notify the individual of a determination to grant access and provide the following information:

(i) The methods of access, as set forth in paragraph (b)(2) of this section;

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(ii) The place at which the record may be inspected;

(iii) The earliest date on which the record may be inspected and the period of time that the records will remain available for inspection. In no event shall the earliest date be later than thirty days from the date of notification;

(iv) The estimated date by which a copy of the record could be mailed and the estimate of fees pursuant to § 4b.11 of this part. In no event shall the estimated date be later than thirty days from the date of notification;

(v) The fact that the individual, if he or she wishes, may be accompanied by another individual during personal access, subject to the procedures set forth in paragraph (f) of this section; and,

(vi) Any additional requirements needed to grant access to a specific record.

(2) *Methods of access.* The following methods of access to records by an individual may be available depending on the circumstances of a given situation:

(i) Inspection in person may be had in the office specified by the Privacy Officer granting access, during the hours indicated in § 4b.4(a);

(ii) Transfer of records to a Federal facility more convenient to the individual may be arranged, but only if the Privacy Officer determines that a suitable facility is available, that the individual's access can be properly supervised at that facility, and that transmittal of the records to that facility will not unduly interfere with operations of the Department or involve unreasonable costs, in terms of both money and manpower; and,

(iii) Copies may be mailed at the request of the individual, subject to payment of the fees prescribed in § 4b.11. The Department, at its own initiative, may elect to provide a copy by mail, in which case no fee will be charged the individual.

(c) Access to medical records is governed by the provisions of § 4b.6.

(d) The Department shall supply such other information and assistance at the time of access as to make the record intelligible to the individual.

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(e) The Department reserves the right to limit access to copies and abstracts of original records, rather than the original records. This election would be appropriate, for example, when the record is in an automated data media such as tape or disc, when the record contains information on other individuals, and when deletion of information is permissible under exemptions (for example, 5 U.S.C. 552a(k)(2)). In no event shall original records of the Department be made available to the individual except under the immediate supervision of the Privacy Officer or his designee. Title 18, United States Code, section 2701(a) makes it a crime to conceal, mutilate, obliterate, or destroy any record filed in a public office, or to attempt to do any of the foregoing.

(f) Any individual who requests access to a record pertaining to that individual may be accompanied by another individual of his or her choice. "Accompanied" includes discussion of the record in the presence of the other individual. The individual to whom the record pertains shall authorize the presence of the other individual in writing and shall include the name of the other individual, a specific description of the record to which access is sought, the Department control number assigned to the request, the date and the signature of the individual to whom the record pertains. The other individual shall sign the authorization in the presence of the Privacy Officer. An individual shall not be required to state a reason or otherwise justify his or her decision to be accompanied by another individual during personal access to a record.

(g) Initial denial of access. (1) *Grounds.* Access by an individual to a record which pertains to that individual will be denied only upon a determination by the Privacy Officer that:

(i) The record is exempt under §§ 4b.13 and 4b.14 or exempt by determination of another agency publishing notice of the system of records, as described in § 4b.3(h);

(ii) The record is information compiled in reasonable anticipation of a civil action or proceeding;

(iii) The provisions of § 4b.6 pertaining to medical records temporarily have been invoked; or,

(iv) The individual unreasonably has failed to comply with the procedural requirements of this part.

(2) *Notification.* The Privacy Officer shall give notice of denial of access to records to the individual in writing and shall include the following information:

(i) The Privacy Officer's name and title or position;

(ii) The date of the denial;

(iii) The reasons for the denial, including citation to the appropriate section of the Act and this part;

(iv) The individual's opportunities, if any, for further administrative consideration, including the identity and address of the responsible official. If no further administrative consideration within the Department is available, the notice shall state that the denial is administratively final; and,

(v) If stated to be administratively final within the Department, the individual's right to judicial review provided under 5 U.S.C. 552a(g)(1), as limited by 5 U.S.C. 552a(g)(5).

(3) *Administrative review.* When an initial denial of a request is issued by the Privacy Officer, the individual's opportunities for further consideration shall be as follows:

(i) As to denial under paragraph (g)(1)(i) of this section, two opportunities for further consideration are available in the alternative:

(A) If the individual contests the application of the exemption to the records, review procedures in § 4b.5(g)(3)(ii) shall apply; or,

(B) If the individual challenges the exemption itself, the procedure is a petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. 553(e). If the exemption was determined by the Department, such petition shall be filed with the Assistant Secretary for Administration. If the exemption was determined by another agency, referred to in § 4b.3(h), the Department will provide the individual with the name and address of the other agency and any relief sought by the individual shall be that provided by the regulations of the other agency. Within the Department, no such denial is admin-

istratively final until such a petition has been filed by the individual and disposed of on the merits by the Assistant Secretary for Administration.

(ii) As to denial under paragraphs (g)(1)(ii), (g)(1)(iv) of this section or (to the limited extent provided in paragraph (g)(3)(i)(A) of this section) paragraph (g)(1)(i), the individual may file for review with the responsible Privacy Appeals Officer identified in Appendix B to this part, as indicated in the Privacy Officer's initial denial notification. The procedures appearing in § 4b.8 shall be followed by both the individual and the Department to the maximum extent practicable.

(iii) As to denial under paragraph (g)(1)(iii) of this section, no further administrative consideration within the Department is available because the denial is not administratively final until expiration of the time period indicated in § 4b.6(a).

(h) If a request is partially granted and partially denied, the Privacy Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 4b.6 Special procedures: Medical records.

(a) No response to any request for access to medical records by an individual will be issued by the Privacy Officer for a period of seven days (excluding Saturdays, Sundays and holidays) from the date of receipt.

(b) The Department has published as a routine use, for all systems of records containing medical records, consultations with an individual's physician or psychologist if, in the sole judgment of the Department, disclosure could have an adverse effect upon the individual. The mandatory waiting period set forth in paragraph (a) of this section will permit exercise of this routine use in appropriate cases. The Department will pay no cost of any such consultation.

(c) In every case of a request by an individual for access to medical records, the Privacy Officer shall:

(1) Inform the individual of the waiting period prescribed in paragraph (a) of this section;

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(2) Obtain the name and address of the individual's physician and/or psychologist, if the individual consents to give them;

(3) Obtain specific, written consent for the Department to consult the individual's physician and/or psychologist in the event that the Department believes such consultation is advisable, if the individual consents to give such authorization;

(4) Obtain specific, written consent for the Department to provide the medical records to the individual's physician or psychologist in the event that the Department believes access to the record by the individual is best effected under the guidance of the individual's physician or psychologist, if the individual consents to give such authorization; and,

(5) Forward the individual's medical record to the Department's medical officer for review and a determination on whether consultation with or transmittal of the medical records to the individual's physician or psychologist is warranted. If the consultation with or transmittal of such records to the individual's physician or psychologist is determined to be warranted, the Department's medical officer shall so consult or transmit. Whether or not such a consultation or transmittal occurs, the Department's medical officer shall provide instruction to the Privacy Officer regarding the conditions of access by the individual to his or her medical records.

(d) If an individual refuses in writing to give the names and consents set forth in paragraphs (c)(2) through (4) of this section and the Department has determined that disclosure could have an adverse effect upon the individual, the Department shall give the individual access to said records by means of a copy, provided without cost to the requester, sent registered mail return receipt requested.

§ 4b.7 Request for correction or amendment to record.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit a request for correction or amendment to the Department. The

request should be made either in person or by mail addressed to the Privacy Officer who processed the individual's request for access to the record, and to whom is delegated authority to make initial determinations on requests for correction or amendment. The offices of Privacy Officers are open to the public between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday (excluding holidays).

(b) The processing of requests submitted by mail will be facilitated if the words "PRIVACY ACT REQUEST" appear in capital letters on the face of the envelope. If, for some reason, the individual is unable to use the Department's official form, the letter should bear the words "PRIVACY ACT REQUEST" in capital letters at the top.

(c) Any request which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in paragraph (b) of this section will be so addressed and marked by Department personnel and forwarded immediately to the responsible Privacy Officer. A request which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring time periods for response until actual receipt by the Privacy Officer. In each instance when a request so forwarded is received, the Privacy Officer shall notify the individual that his or her request was improperly addressed and the date when the request was received at the proper address.

(d) Since the request, in all cases, will follow a request for access under § 4b.5, the individual's identity will be established by his or her signature on the request and use of the Department control number assigned to the request.

(e) A request for correction or amendment should include the following:

(1) A specific identification of the record sought to be corrected or amended (for example, description, title, date, paragraph, sentence, line and words);

(2) The specific wording to be deleted, if any;

(3) The specific wording to be inserted or added, if any, and the exact

place at which to be inserted or added; and,

(4) A statement of the basis for the requested correction or amendment, with all available supporting documents and materials which substantiate the statement. The statement should identify the criterion of the Act being invoked, that is, whether the information in the record is unnecessary, inaccurate, irrelevant, untimely or incomplete.

§ 4b.8 Agency review of request for correction or amendment of record.

(a)(1) (i) Not later than ten days (excluding Saturdays, Sundays and holidays) after receipt of a request to correct or amend a record, the Privacy Officer shall send an acknowledgment providing an estimate of time within which action will be taken on the request and asking for such further information as may be necessary to process the request. The estimate of time may take into account unusual circumstances as described in § 4b.5(a). No acknowledgment will be sent if the request can be reviewed, processed and the individual notified of the results of review (either compliance or denial) within the ten days. Requests filed in person will be acknowledged in writing at the time submitted.

(ii) If the Privacy Officer fails to send the acknowledgment within the ten days, as provided above, the requester may ask the responsible Privacy Appeals Officer, identified in Appendix B to this part, to take corrective action. No failure of a Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(2) Promptly after acknowledging receipt of a request, or after receiving such further information as might have been requested, or after arriving at a decision within the ten days, the Privacy Officer shall either:

(i) Make the requested correction or amendment and advise the individual in writing of such action, providing either a copy of the corrected or amended record or a statement as to the means whereby the correction or amendment was effected in cases where a copy cannot be provided (for example, erasure of information from

a record maintained only in magnetically recorded computer files); or,

(ii) Inform the individual in writing that his or her request is denied and provide the following information:

(A) The Privacy Officer's name and title or position;

(B) The date of the denial;

(C) The reasons for the denial, including citation to the appropriate sections of the Act and this part; and,

(D) The procedures for appeal of the denial as set forth in § 4b.9, including the name and address of the responsible Privacy Appeals Officer from Appendix C to this part.

The term "promptly" in this subsection means within thirty days (excluding Saturdays, Sundays and holidays). If the Privacy Officer cannot make the determination within thirty days, the individual will be advised in writing of the reason therefor and of the estimated date by which the determination will be made.

(b) Whenever an individual's record is corrected or amended pursuant to a request by that individual, the Privacy Officer shall see to the notification of all persons and agencies to which the corrected or amended portion of the record had been disclosed prior to its correction or amendment, if an accounting of such disclosure required by the Act was made. The notification shall require a recipient agency maintaining the record to acknowledge receipt of the notification, to correct or amend the record and to apprise any agency or person to which it had disclosed the record of the substance of the correction or amendment.

(c) The following criteria will be considered by the Privacy Officer in reviewing a request for correction or amendment:

(1) The sufficiency of the evidence submitted by the individual;

(2) The factual accuracy of the information;

(3) The relevance and necessity of the information in terms of purpose for which it was collected;

(4) The timeliness and currency of the information in light of the purpose for which it was collected;

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(5) The completeness of the information in terms of the purpose for which it was collected;

(6) The degree of risk that denial of the request could unfairly result in determinations adverse to the individual;

(7) The character of the record sought to be corrected or amended; and,

(8) The propriety and feasibility of complying with the specific means of correction or amendment requested by the individual.

(d) The Department will not undertake to gather evidence for the individual, but does reserve the right to verify the evidence which the individual submits.

(e) Correction or amendment of a record requested by an individual will be denied only upon a determination by the Privacy Officer that:

(1) The individual has failed to establish, by a preponderance of the evidence, the propriety of the correction or amendment in light of the criteria set forth in paragraph (c) of this section;

(2) The record sought to be corrected or amended is part of the official record in a terminated judicial, quasi-judicial or quasi-legislative proceeding to which the individual was a party or participant;

(3) The information in the record sought to be corrected or amended, or the record sought to be corrected or amended, is the subject of a pending judicial, quasi-judicial or quasi-legislative proceeding to which the individual is a party or participant;

(4) The correction or amendment would violate a duly enacted statute or promulgated regulation; or,

(5) The individual unreasonably has failed to comply with the procedural requirements of this part.

(f) If a request is partially granted and partially denied, the Privacy Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 4b.9 Appeal of initial adverse agency determination on correction or amendment.

(a) When a request for correction or amendment has been denied initially

under § 4b.8, the individual may submit a written appeal within thirty days after the date of the initial denial. When an appeal is submitted by mail, the postmark is conclusive as to timeliness.

(b) An appeal shall be addressed to the Privacy Appeals Officer identified in the initial denial (that official is authorized to make final determinations). The processing of appeals will be facilitated if the words "PRIVACY APPEAL" appear in capital letters on both the envelope and the top of the appeal papers. An appeal not addressed and marked as provided herein will be so marked by Department personnel when it is so identified, and will be forwarded immediately to the responsible Privacy Appeals Officer. An appeal which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring the time periods in this section until actual receipt by the Privacy Appeals Officer. In each instance when an appeal so forwarded is received, the Privacy Appeals Officer shall notify the individual that his or her appeal was improperly addressed and the date when the appeal was received at the proper address.

(c) The individual's appeal papers shall include a statement of the reasons why the initial denial is believed to be in error and the Department's control number assigned to the request. The appeal shall be signed by the individual. The record which the individual requests be corrected or amended and all correspondence between the Privacy Officer and the requester will be supplied by the Privacy Officer who issued the initial denial. While the foregoing normally will comprise the entire record on appeal, the Privacy Appeals Officer may seek additional information necessary to assure that the final determination is fair and equitable and, in such instances, the additional information will be disclosed to the individual to the greatest extent possible and an opportunity provided for comment thereon.

(d) No personal appearance or hearing on appeal will be allowed.

(e) The Privacy Appeals Officer shall act upon the appeal and issue a

final determination in writing not later than thirty days (excluding Saturdays, Sundays and holidays) from the date on which the appeal is received; *Provided*, That the Privacy Appeals Officer may extend the thirty days upon deciding that a fair and equitable review cannot be made within that period, but only if the individual is advised in writing of the reason for the extension and the estimated date by which a final determination will issue. The estimated date should not be later than the sixtieth day (excluding Saturdays, Sundays and holidays) after receipt of the appeal unless unusual circumstances, as described in § 4b.5(a), are met.

(f) If the appeal is determined in favor of the individual, the final determination shall include the specific corrections or amendments to be made and a copy thereof shall be transmitted promptly both to the individual and to the Privacy Officer who issued the initial denial. Upon receipt of such final determination, the Privacy Officer promptly shall take the actions set forth in § 4b.8(a)(2)(i) and (b).

(g) If the appeal is denied, the final determination shall be transmitted promptly to the individual and state the reasons for the denial. The notice of final determination also shall inform the individual of the following:

(1) The right of the individual under the Act to file a concise statement of reasons for disagreeing with the final determination. The statement ordinarily should not exceed one page and the Department reserves the right to reject a statement of excessive length. Such a statement shall be filed with the Privacy Appeals Officer. It should provide the Department control number assigned to the request, indicate the date of the final determination and be signed by the individual. The Privacy Appeals Officer shall acknowledge receipt of such statement and inform the individual of the date on which it was received;

(2) The facts that any such disagreement statement filed by the individual will be noted in the disputed record, that the purposes and uses to which the statement will be put are those applicable to the record in which it is noted, and that a copy of the state-

ment will be provided to persons and agencies to which the record is disclosed subsequent to the date of receipt of such statement;

(3) The fact that the Department will append to any such disagreement statement filed by the individual, a copy of the final determination or summary thereof which also will be provided to persons and agencies to which the disagreement statement is disclosed; and,

(4) The right of the individual to judicial review of the final determination under 5 U.S.C. 552a(g)(1)(A), as limited by 5 U.S.C. 552a(g)(5).

(h) In making the final determination, the Privacy Appeals Officer shall employ the criteria set forth in § 4b.8(c) and shall deny an appeal only on the grounds set forth in § 4b.8(e).

(i) If an appeal is partially granted and partially denied, the Privacy Appeals Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

(j) Although a copy of the final determination or a summary thereof will be treated as part of the individual's record for purposes of disclosure in instances where the individual has filed a disagreement statement, it will not be subject to correction or amendment by the individual.

(k) The provisions of paragraphs (g)(1) through (3) of this section satisfy the requirements of 5 U.S.C. 552a(e)(3).

§ 4b.10 Disclosure of record to person other than the individual to whom it pertains.

(a) The Department may disclose a record pertaining to an individual to a person other than the individual to whom it pertains only in the following instances:

(1) Upon written request by the individual, including authorization under § 4b.5(f);

(2) With the prior written consent of the individual;

(3) To a parent or legal guardian under 5 U.S.C. 552a(h);

(4) When required by the Act and not covered explicitly by the provisions of 5 U.S.C. 552a(b); and

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(5) When permitted under 5 U.S.C. 552a(b)(1) through (11), which read as follows:¹

(i) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(ii) Required under section 552 of this title;

(iii) For a routine use as defined in paragraph (a)(7) of this section and described under paragraph (e)(4)(D) of this section;

(iv) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13;

(v) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(vi) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(vii) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(viii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(ix) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of

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Congress or subcommittee of any such joint committee;

(x) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(xi) Pursuant to the order of a court of competent jurisdiction.

(b) The situations referred to in paragraph (a)(4) of this section include the following:

(1) 5 U.S.C. 552a(c)(4) requires dissemination of a corrected or amended record or notation of a disagreement statement by the Department in certain circumstances;

(2) 5 U.S.C. 552a(d) requires disclosure of records to the individual to whom they pertain, upon request;

(3) 5 U.S.C. 552a(g) authorizes civil action by an individual and requires disclosure by the Department to the court;

(4) Section 5(e)(2) of the Act authorizes release of any records or information by the Department to the Privacy Protection Study Commission upon request of the Chairman; and

(5) Section 6 of the Act authorizes the Office of Management and Budget to provide the Department with continuing oversight and assistance in implementation of the Act.

(c) The Privacy Officer shall make an accounting of each disclosure by him of any record contained in a system of records in accordance with 5 U.S.C. 552a(c)(1) and (2). Except for a disclosure made under 5 U.S.C. 552a(b)(7), the Privacy Officer shall make such accounting available to any individual, insofar as it pertains to that individual, on request submitted in accordance with § 4b.4. The Privacy Officer shall make reasonable efforts to notify any individual when any record in a system of records is disclosed to any person under compulsory legal process, promptly upon being informed that such process has become a matter of public record.

§ 4b.11 Fees.

(a) The only fees to be charged to or collected from an individual under the provisions of this part are for copying

¹5 U.S.C. 552a(b)(4) has no application within the Department.

records at the request of the individual.

(1) No fees shall be charged or collected for the following: Search for and retrieval of the records; review of the records; copying at the initiative of the Department without a request from the individual; transportation of records and personnel; and first-class postage.

(2) It is the policy of the Department to provide an individual with one copy of each record corrected or amended pursuant to his or her request without charge as evidence of the correction or amendment.

(3) As required by the United States Civil Service Commission in its published regulations implementing the Act, the Department will charge no fee for a single copy of a personnel record covered by that Commission's Government-wide published notice of systems of records.

(b) The copying fees prescribed by paragraph (a) of this section are:

\$0.07	Each copy of each page, up to 8½" x 14", made by photocopy or similar process.
\$0.25	Each copy of each microform frame printed on paper.
\$0.25	Each aperture card.
\$0.25	Each 105-mm fiche.
\$7.00	Each 100' roll of 35-mm microfilm.
\$6.00	Each 100' roll of 16-mm microfilm.
\$0.20	Each page of computer printout without regard to the number of carbon copies concurrently printed.

Other copying forms (e.g., typing or printing) will be charged at direct cost, including personnel and equipment costs.

(c) All copying fees shall be paid by the individual before the copying will be undertaken. Payments shall be made in cash or, preferably, by check or money order payable to "U.S. Department of Commerce," and they shall be paid or sent to the office stated in the billing notice, or if none, to the Privacy Officer processing the request. Where appropriate, payment may be required in the form of certified check.

(d) A copying fee totaling \$1 or less shall be waived, but the copying fees for contemporaneous requests by the same individual shall be aggregated to determine the total fee.

A copying fee shall not be charged or collected, or alternatively, it may be reduced, when it is determined by the Privacy Officer, based on a petition therefor, that the petitioning individual is indigent and that Department resources permit a waiver of all or part of the fee. An individual is deemed to be indigent when without income or resources sufficient to pay the fees.

(e) Special and additional services provided at the request of the individual, such as certification or authentication, postal insurance and special mailing arrangement costs, will be charged to the individual in accordance with other published regulations of the Department pursuant to statute (for example, 31 U.S.C. 483a).

(f) This section applies only to individuals making requests under this part. To the extent an individual makes a request under the Freedom of Information Act, as provided in § 4b.1(e) (2), (3) and (5), the fees provisions of this chapter shall apply. All other persons shall remain subject to fees and charges prescribed by other and appropriate authorities.

§ 4b.12 Penalties.

(a) The Act provides, in pertinent part:

Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000. (5 U.S.C. 552a(i)(3)).

(b) A person who falsely or fraudulently attempts to obtain records under the Act also may be subject to prosecution under such other criminal statutes as 18 U.S.C. 494, 495 and 1001.

§ 4b.13 General exemptions.

(a) Individuals may not have access to records maintained by the Department but which were provided by another agency which has determined by regulation that such information is subject to general exemption under 5 U.S.C. 552a(j). If such exempt records are within a request for access, the Department will advise the individual of their existence and of the name and address of the source agency. For any further information concerning the

record and the exemption, the individual must contact that source agency.

(b) The general exemptions determined to be necessary and proper with respect to systems of records maintained by the Department, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

(1) *Individuals identified in Export Administration compliance proceedings or investigations—COMMERCE/ITA-1.* Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). These exemptions are necessary to insure the proper functioning of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to maintain the integrity of the law enforcement process, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, to prevent interference with law enforcement proceedings, to avoid disclosure of investigative techniques, and to avoid the endangering of law enforcement personnel. Section 7(c) of the Export Administration Act of 1969, as amended, also protects this information from disclosure.

(2) *Fisheries Law Enforcement Case Files—COMMERCE/NOAA-11.* Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a (b), (c) (1) and (2), (e) (4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). These exemptions are necessary to insure the proper functioning of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to prevent interference with law enforcement proceedings, to avoid the disclosure of investigative techniques, to avoid the endangering of law enforcement personnel, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, and to maintain

the integrity of the law enforcement process.

(3) *Investigative Records—Contract and Grant Frauds and Employee Criminal Misconduct—COMMERCE/DEPT-12.* Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). These exemptions are necessary to insure the proper functions of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to prevent interference with law enforcement proceedings, to avoid the disclosure of investigative techniques, to avoid the endangering of law enforcement personnel, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, and to maintain the integrity of the law enforcement process.

(5 U.S.C. 552a(f) and (k), sec. 3, Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896))

[40 FR 45621, Oct. 2, 1975; 40 FR 50662, Oct. 30, 1975; 40 FR 51168, Nov. 3, 1975, as amended at 43 FR 43020, Sept. 22, 1978]

§ 4b.14 Specific exemptions.

(a) Some systems of records under the Act which are maintained by the Department contain, from time to time, material subject to the exemption appearing at 5 U.S.C. 552a(k)(1), relating to national defense and foreign policy materials. The systems of records published in the *FEDERAL REGISTER* by the Department which are within this exemption are:

COMMERCE/ITA-1, COMMERCE/ITA-2, COMMERCE/ITA-3, COMMERCE/NOAA-11, COMMERCE/PAT-TM-4, COMMERCE/PAT-TM-6, COMMERCE/PAT-TM-7, COMMERCE/PAT-TM-8, COMMERCE/PAT-TM-9, COMMERCE/DEPT-12, COMMERCE/DEPT-13, and COMMERCE/DEPT-14.

The Department hereby asserts a claim to exemption of such materials wherever they might appear in such systems of records, or any systems of records, at present or in the future. The materials would be exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)

(G), (H), and (I), and (f). The reason therefor is to protect the materials required by Executive order to be kept secret in the interest of the national defense and foreign policy.

(b) The specific exemptions determined to be necessary and proper with respect to systems of records maintained by the Department, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

(1) *Exempt under 5 U.S.C. 552a(k)(1).* The systems of records exempt hereunder appear in paragraph (a) of this section. The claims for exemption of COMMERCE/DEPT-12, COMMERCE/ITA-1, and COMMERCE/NOAA-11 under this paragraph are subject to the condition that the general exemption claimed in § 4b.13(b)(3) is held to be invalid.

(2) *Exempt under 5 U.S.C. 552a(k)(2).* The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

(i) Individuals identified in Export Administration compliance proceedings or investigations—COMMERCE/ITA-1, but only on condition that the general exemption claimed in § 4b.13(b)(1) is held to be invalid;

(ii) Individuals involved in export transactions—COMMERCE/ITA-2;

(iii) Fisheries Law Enforcement Case Files—COMMERCE/NOAA-11, but only on condition that the general exemption claimed in § 4b.13(b)(2) is held to be invalid;

(iv) Investigative Records—Contract and Grant Frauds and Employee Criminal Misconduct—COMMERCE/DEPT-12, but only on condition that the general exemption claimed in § 4b.13(b)(3) is held to be invalid;

(v) Investigative Records—Persons Within the Investigative Jurisdiction of the Department—COMMERCE/DEPT-13;

(vi) Litigation, Claims and Administrative Proceeding Records—COMMERCE/DEPT-14; and,

(vii) Non-Registered Persons Rendering Assistance to Patent Applicants—COMMERCE/PAT-TM-5.

The foregoing are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The reasons for asserting the exemption are to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources and law enforcement personnel. Special note is taken of the fact that the proviso clause in this exemption imports due process and procedural protections for the individual. The existence and general character of the information exempted will be made known to the individual to whom it pertains.

(3) *Exempt under 5 U.S.C. 552a(k)*

(4). The systems of records exempt, the sections of the Act from which exempted, and the reasons therefor are as follows:

(i) Agricultural Census Records for 1964 (partial), 1969, and 1974—COMMERCE/CENSUS-1;

(ii) Individual and Household Statistical Surveys and Special Census Studies Records—COMMERCE/CENSUS-3;

(iii) Minority-Owned Business Enterprises Survey Records—COMMERCE/CENSUS-4;

(iv) Population and Housing Census Records for 1960 and 1970—COMMERCE/CENSUS-5;

(v) Population Census Personal Service Records for 1900 and All Subsequent Decennial Censuses—COMMERCE/CENSUS-6; and,

(vi) Special Censuses of Population Conducted for State and Local Government—COMMERCE/CENSUS-7.

The foregoing are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G) (H), and (I), and (f). The reasons for asserting the exemption are to comply with the prescription of Title 13, United States Code, especially sections 8 and 9 relating to prohibitions against disclosure, and to avoid needless consideration of these records whose sole statistical use comports fully with a

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basic purpose of the Act, namely, no adverse determinations may be made from these records as to any identifiable individual.

(4) *Exempt under 5 U.S.C. 552a(k)(5).* The systems of records exempt (some only conditionally), the sections of the act from which exempted, and the reasons therefor are as follows:

(i) Applications to U.S. Merchant Marine Academy (USMMA)—COMMERCE/MA-1;

(ii) USMMA Midshipman Medical Files—COMMERCE/MA-17;

(iii) USMMA Midshipman Personnel Files—COMMERCE/MA-18;

(iv) USMMA Non-Appropriated fund Employees—COMMERCE/MA-19;

(v) Applicants for the NOAA Corps—COMMERCE/NOAA-4;

(vi) Commissioned Officer Official Personnel Folders—COMMERCE/NOAA-7;

(vii) Conflict of Interest Records, Appointed Officials—COMMERCE/DEPT-3;

(viii) Investigative Records—Contract and Grant Frauds and Employee Criminal Misconduct—COMMERCE/DEPT-12, but only on condition that the general exemption claimed in § 4b.13(b)(3) is held to be invalid;

(ix) Investigative Records—Persons Within the Investigative Jurisdiction of the Department—COMMERCE/DEPT-13; and,

(x) Litigation, Claims, and Administrative Proceeding Records—COMMERCE/DEPT-14.

The foregoing are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). The reasons for asserting the exemption are to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources and, ultimately, to facilitate proper selection or continuance of the best applicants or persons for a given position or contract. Special note is made of the limitation on the extent to which this exemption may be asserted. The existence and general character of the information exempted will be made known to the individual to whom it pertains.

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(c) At the present time, the Department claims no exemption under 5 U.S.C. 552a(k) (3), (6) and (7).

(5 U.S.C. 552a (f) and (k), sec. 3, Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896))

[40 FR 45621, Oct. 2, 1975; 40 FR 50862, Oct. 30, 1975; 40 FR 51168, Nov. 3, 1975, as amended at 43 FR 43021, Sept. 22, 1978]

APPENDIX A—OFFICIALS TO RECEIVE INQUIRIES, REQUESTS FOR ACCESS AND REQUESTS FOR CORRECTION OR AMENDMENT ¹

For records in systems of records located in— ²	Privacy officer
The Office of the Secretary and all departmental staff offices. Office of the Inspector General.	Chief, Information Policy and Management Division, Room 6622, Main Commerce Building, Washington, D.C. 20230. Assistant Inspector General for Investigations, Office of the Inspector General, Room 7067, Main Commerce Building, Washington, D.C. 20006.
Economic Affairs ³	Privacy Act Officer, Office of Administration, Economic Affairs, Main Commerce Building, Washington, D.C. 20230.
Bureau of the Census	Associate Director for Administration Bureau of the Census, Federal Building 3, Washington, D.C. 20230.
Economic Development Administration.	Director, Office of Management and Administration, Economic Development Administration, Main Commerce Building, Washington, D.C. 20230.
International Trade Administration.	Privacy Act Officer, Office of Management and Systems, International Trade Administration, Room 4102, Main Commerce Building, Washington, D.C. 20230.
Minority Business Development Agency.	Privacy Officer, Office of Chief Counsel, Minority Business Development Agency, Main Commerce Building, Washington, D.C. 20230.
National Bureau of Standards.	Deputy Director of Administration, National Bureau of Standards, Room A1105, Administration Building, Washington, D.C. 20234.
National Oceanic and Atmospheric Administration: Inquiries only: All NOAA except NOAA Corps.	Assistant Administrator for Management and Budget, National Oceanic and Atmospheric Administration, 6010 Executive Blvd., Rockville, Maryland 20852.
NOAA Corps	Director, National Oceanic and Atmospheric Administration Corps, 6010 Executive Boulevard, Rockville, Maryland 20852.

Office of the Secretary, Commerce

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APPENDIX A—OFFICIALS TO RECEIVE INQUIRIES, REQUESTS FOR ACCESS AND REQUESTS FOR CORRECTION OR AMENDMENT¹—Continued

For records in systems of records located in— ²	Privacy officer
Requests: All NOAA including NOAA Corps.	Assistant Administrator for Management and Budget, National Oceanic and Atmospheric Administration, 6010 Executive Boulevard, Rockville, Maryland 20852.
National Telecommunications and Information Administration.	Director of Administration, National Telecommunications & Information Administration, Room 4616, U.S. Department of Commerce, Washington, D.C. 20504.
National Technical Information Service.	Chief, Management Analysis Division, National Technical Information Service, 5285 Port Royal Road Springfield, Virginia 22161.
Patent and Trademark Office.	Solicitor, Patent and Trademark Office, Washington, D.C. 20231.
United States Travel and Tourism Administration.	Director, Office of Management and Administration, United States Travel and Tourism Administration, Main Commerce Building, Washington, D.C. 20230.

¹ National Oceanic and Atmospheric Administration subject to division of responsibilities noted below.

² If the location of the records within the Department is unknown, address the inquiry to the Privacy Officer for the Office of the Secretary.

³ Excluding Bureau of the Census and National Technical Information Service listed separately.

[47 FR 33680, Aug. 4, 1982]

APPENDIX B—OFFICIALS TO RECEIVE APPEALS FROM ADVERSE DETERMINATION ON CORRECTION OR AMENDMENT

For records in systems of records located in—	Privacy appeals officer
The Office of the Secretary and all departmental staff offices.	Assistant Secretary for Administration, Main Commerce Building, Washington, D.C. 20230.
Office of the Inspector General.	Inspector General, Room 7896C, Main Commerce Building, Washington, D.C. 20230.
Economic Affairs ¹	Under Secretary for Economic Affairs, Room 4848, Main Commerce Building, Washington, D.C. 20230.
Bureau of Economic Analysis.	Director, Bureau of Economic Analysis, Tower Building, 1401 K Street, N.W., Washington, D.C. 20230.
Bureau of the Census.	Director, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

APPENDIX B—OFFICIALS TO RECEIVE APPEALS FROM ADVERSE DETERMINATION ON CORRECTION OR AMENDMENT—Continued

For records in systems of records located in—	Privacy appeals officer
Bureau of Industrial Economics.	Director, Bureau of Industrial Economics, Main Commerce Building, Washington, D.C. 20230.
Economic Development Administration.	Assistant Secretary for Economic Development, Main Commerce Building, Washington, D.C. 20230.
International Trade Administration.	Under Secretary for International Trade, Main Commerce Building, Washington, D.C. 20230.
Minority Business Development Agency.	Director, Minority Business Development Agency, Main Commerce Building, Washington, D.C. 20230.
National Bureau of Standards.	Director, National Bureau of Standards, Room A-1134, Administration Building, Washington, D.C. 20234.
National Oceanic and Atmospheric Administration.	Administrator, National Oceanic and Atmospheric Administration, Main Commerce Building, Washington, D.C. 20230.
National Telecommunications and Information Administration.	Assistant Secretary for Communications and Information, Room 4898, Main Commerce Building, Washington, D.C. 20230.
National Technical Information Service.	Director, National Technical Information Service 5285 Port Royal Road, Springfield, Virginia 22161.
Patent and Trademark Office.	Commissioner, Patent and Trademark Office, Washington, D.C. 20231.
United States Travel and Tourism Administration.	Under Secretary for Travel and Tourism, Main Commerce Building, Washington, D.C. 20230.

¹ Economic Affairs includes: Office of the Under Secretary for Economic Affairs, Office of the Assistant Secretary for Productivity, Technology and Innovation, Office of the Chief Economist, Office of Economic Conditions, Office of Economic Policy, Office of Competitive Assessment, and Office of Strategic Resources.

(5 U.S.C. 552a)

[47 FR 33681, Aug. 4, 1982]

APPENDIX C—SYSTEMS OF RECORDS NOTICED BY OTHER AGENCIES AND APPLICABLE TO RECORDS OF THE DEPARTMENT AND APPLICABILITY OF THIS PART THERETO

Category of Records	Other Federal agency
Federal Personnel Records.	Office of Personnel Management ¹
Federal Employee Compensation Act Program.	Department of Labor ²

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APPENDIX C—SYSTEMS OF RECORDS NOTICED BY OTHER AGENCIES AND APPLICABLE TO RECORDS OF THE DEPARTMENT AND APPLICA- BILITY OF THIS PART THERETO—Continued

Category of Records	Other Federal agency
Equal Employment Opportunity under E.O. 11246, as amended.	Department of Labor ¹
Foreign Service Officer Appraisals.	Department of State ²
Payroll and Travel Records of Department Employees at Diplomatic Posts Overseas.	Department of State ²
Equal Employment Opportunity Complaint Records and Appeal Records.	Equal Employment Opportunity Commission ⁴

¹ The provisions of this part do not apply to these records covered by notices of systems of records published by the U.S. Office of Personnel Management for all agencies. The regulations of that Office alone apply.

² The provisions of this part apply only initially to these records covered by notices of systems of records published by the U.S. Department of Labor for all agencies. The regulations of that Department attach at the point of any denial for access or for correction or amendment.

³ The provisions of this part do not apply to these records covered by notices of systems of records published by the U.S. Department of State for all agencies. The regulations of that Department alone apply.

⁴ The provisions of this part do apply to these records covered by notices of systems of records published by the Equal Employment Opportunity Commission for all agencies.

[45 FR 82103, Dec. 12, 1980]

APPENDIX D

FACSIMILE OF OFFICIAL FORM FOR INQUIRIES AND REQUESTS

FORM CD-31a REV. 1-74 PRESCRIBED BY 15 CFR PART 4b (200-200-151)	U.S. DEPARTMENT OF COMMERCE	Form Approved: OMB No. 41-8755B
PRIVACY ACT INFORMATION REQUEST		DEPT. FACILITY
(NOTE: Use of this form is recommended, but is not mandatory.)		CONTROL NO.

INSTRUCTIONS: To Request Information or Action Under the Act, Complete appropriate items in Part I. Retain Gold Copy; Submit Others to Department of Commerce. Part II is For Agency Use Only.

SPECIAL NOTICE: FALSE STATEMENTS SUBJECT TO CRIMINAL PENALTIES. SEE REVERSE SIDE.

PART I - REQUESTER

1. Name of individual whose record(s) is sought (Please print):	5. Action requested: a. ☐ Tell me how to exercise my rights under the Privacy Act. b. ☐ Tell me if you have the requested record(s). c. ☐ Tell me when and where I may have access to the requested record(s). d. ☐ Please send a copy of the requested record(s). *(If the request concerns records of another individual who is a ward or minor, and the requester is the ward's guardian or minor's parent, the requester must check item 6, and must attach a copy of court guardianship order or minor's birth certificate)
2. Individual whose record(s) is sought is: ☐ U.S. citizen ☐ Alien lawfully admitted for permanent residence	
3. Give any identifying data that would help locate the record (e.g., maiden name, occupational license number, period or place of employment, etc.):	
4. Record requested (Please describe. Also give record system name and number, if known):	6. Requester is: ☐ Guardian of individual OR ☐ Parent of minor individual } whose record(s) is sought
7. Requester's: Name (Please print) _____ Address _____ Signature _____ Telephone number (Optional) _____	8. Date _____

NOTE: Item 9 should be completed ONLY if requester—

—Requests action under item 5b, c, or d, AND

—Seeks a record NOT disclosable to any person under the Freedom of Information Act (5 U.S.C. 552), AND

—Does NOT appear in person before an authorized employee of the Department to have his/her identity verified.

9. Certificate of Notary Public, or other officer
State of _____, County of _____, I, _____, do hereby certify that _____, the undersigned requester, came before me on _____, 19____, in and for the aforesaid county and state, this _____ day of _____, 19____, and established (his) (her) identity to my satisfaction. My commission expires _____.

Signature _____

PART II - FOR AGENCY USE ONLY

Proof of identity established in person before (Name, title, location):	Received by _____	Fee data: Amount due \$ _____ Date received _____
	Date request received _____	
	Action assigned to _____ Date _____	Non-collectable costs:
	Due date of response to Requester _____	

Copy Distribution: Requester keeps Canary; sends others to Department. (Privacy Officers keeps Pink; sends others to Action Office, which retains Goldenrod and returns White to Privacy Officer.)

SPECIAL NOTICE

FALSE STATEMENTS SUBJECT TO CRIMINAL PENALTIES

The Privacy Act of 1974 (Pub. L. 93-579), 5 U.S.C. 552a(i)(3), states:

"Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretences shall be guilty of a misdemeanor and fined not more than \$5,000."

PART 5—OPERATION OF VENDING STANDS

Sec.

- 5.1 Purpose.
- 5.2 Policy.
- 5.3 Assignment of functions and authorities.
- 5.4 Permits.
- 5.5 Vending machines.
- 5.6 Appeals.
- 5.7 Reports.
- 5.8 Approval of regulations.

AUTHORITY: Sec. 4, 68 Stat. 663; 20 U.S.C. 107.

SOURCE: 28 FR 7772, July 31, 1963, unless otherwise noted.

§ 5.1 Purpose.

This part prescribes regulations to assure the granting of preference to blind persons licensed under the provisions of the Randolph-Sheppard Vending Stand Act (49 Stat. 1559, as amended by the act of August 3, 1954, 68 Stat. 663; 20 U.S.C. 107) for the operation of vending stands (which term as used in this order includes vending machines).

§ 5.2 Policy.

(a) The Department adopts the Federal policy announced in the Randolph-Sheppard Vending Stand Act, as amended, to provide blind persons with remunerative employment to enlarge the economic opportunities of the blind and to stimulate the blind to greater efforts in striving to make themselves self-supporting.

(b) It shall be the policy of the Department to authorize blind persons licensed under the provisions of the Randolph-Sheppard Vending Stand Act, as amended to operate vending stands without any charge for space or necessary utilities on properties owned and occupied by the Department or on which the Department controls maintenance, operation, and protection.

(c) The Department will cooperate with the Department of Health, Education, and Welfare and State licensing agencies in making surveys to determine whether and where vending stands may be properly and profitably operated by licensed blind persons.

(d) The application of a State licensing agency for a permit may be denied

or revoked if it is determined that the interests of the United States would be adversely affected or the Department would be unduly inconvenienced by the issuance of a permit or its continuance.

(e) Disagreements concerning the denial, revocation, or modification of a permit may be appealed by the State licensing agency as set forth in § 5.6.

§ 5.3 Assignment of functions and authorities.

(a) The Director, Office of Administrative Services, shall carry out the Department's responsibility to provide, in accordance with applicable law and regulation, the maximum opportunity for qualified blind persons to operate vending stands.

(b) Subject to instructions issued by the Director, Office of Administrative Services, the head of each primary organization unit shall be responsible for implementing this program within his area.

(c) The Director, Office of Administrative Services for the primary organization units located in the main Commerce building and the head of each other primary organization unit will make determinations with respect to the terms of permits including the location and operation of vending stands and machines in their respective areas.

(d) Unresolved differences and significant violations of the terms of permits shall be reported to the State licensing agency. Where no corrective action is forthcoming, the matter shall be referred to the Office of Vocational Rehabilitation, Department of Health, Education, and Welfare for consideration prior to further action.

§ 5.4 Permits.

(a) No permit, lease, or other arrangement for the operation of a vending stand on property under control of the Department shall be entered into or renewed without first consulting the State licensing agency or equivalent authority.

(b) The permit shall be conditioned upon the vending stand meeting specified standards, including standards relating to appearance, safety, sanita-

tion, maintenance, and efficiency of operation. Due regard shall be given to laws and regulations for the public welfare which are applicable, or would be applicable, if the property involved was not owned or controlled by the Federal Government.

(c) The permit shall specify the types of articles specified in section 2(a)(4) of the Act as amended (newspapers, periodicals, confections, tobacco products, articles dispensed automatically or in containers or wrappings in which they are placed before delivery to the vending stand). Such other related articles as the State licensing agency asks to be included shall be permitted to be sold, unless such factors as inadequacy of available facilities, safety, health, public welfare, or legal requirements demand otherwise.

(d) The permit shall contain a provision that alterations made by other than the United States shall be approved by and conducted under the supervision of an appropriate official of the Department or the primary organization unit concerned.

(e) The permit may contain other reasonable conditions necessary for the protection of the Government and prospective patrons of the stand.

(f) The permit shall describe the location of the stand proper and the location of any vending machines which are operated in conjunction with it.

§ 5.5 Vending machines.

(a) The income from any vending machines which are located within reasonable proximity to and are in direct competition with a vending stand for which a permit has been issued under these regulations shall be assigned to the operator of such stand.

(b) If a vending machine vends articles of a type authorized by the permit and is so located that it attracts customers who would otherwise patronize the vending stand, such machine shall be deemed to be in reasonable proximity to and direct competition with the stand.

§ 5.6 Appeals.

(a) In any instance where the Department of Commerce official as provided in § 5.3(c) and the State licensing agency fail to reach agreement

concerning the granting, revocation, or modification of a permit, the location, method of operation, assignment of proceeds, or other terms of a permit (including articles which may be sold), the State licensing agency shall be notified in writing by the Commerce official concerned that it has the right to appeal such disagreements, within 30 days of the notice, to the Assistant Secretary for Administration for investigation and final decision.

(b) Upon receipt of a timely appeal the Assistant Secretary for Administration will cause a full investigation to be made. The State licensing agency shall be given an opportunity to present information pertinent to the facts and circumstances of the case. The complete investigation report including the recommendations of the investigating officer shall be submitted to the Assistant Secretary for Administration within 60 days from the date of the appeal.

(c) The Assistant Secretary for Administration will render a final decision on the appeal within 90 days of the date of appeal.

(d) The State licensing agency will be informed of the final decision on its appeal. Copies of the decision will be forwarded to the Department of Commerce official concerned and the Department of Health, Education, and Welfare.

§ 5.7 Reports.

No later than fifteen days following the end of each fiscal year the responsible officials set forth in § 5.3(c) shall forward to the Director, Office of Administrative Services a report on activities under this order. The report shall include:

(a) The number of applications, including requests for installations initiated by the Department, for vending stands received from State licensing agencies;

(b) The number of such requests accepted or approved;

(c) The number denied, on which no appeal was made and the number denied on which an appeal was made; and

(d) The number and status of any requests still pending.

§ 5.8

§ 5.8 Approval of regulations.

The provisions of this part have been approved by the Director, Bureau of the Budget, pursuant to Executive Order 10604, of April 22, 1955.

PART 6—STANDARDIZATION OF DATA ELEMENTS AND REPRESENTATIONS

Sec.

- 6.1 Purpose.
- 6.2 Background.
- 6.3 Objectives.
- 6.4 Glossary.
- 6.5 Types of standards.
- 6.6 Policies.
- 6.7 Responsibilities.
- 6.8 Exceptions, deferments, and revisions of Federal standards.
- 6.9 Effect on previously issued standards.

APPENDIX A—GLOSSARY OF TERMS

AUTHORITY: 79 Stat. 1127; Executive Order 11717, dated May 9, 1973 (38 FR 12315, dated May 11, 1973).

SOURCE: 38 FR 33483, Dec. 5, 1973, unless otherwise noted.

§ 6.1 Purpose.

(a) The purpose of this part is to implement the provisions of section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended (79 Stat. 1127) and Executive Order 11717 of May 9, 1973 (38 FR 12315, dated May 11, 1973). It supersedes and replaces in its entirety Office of Management and Budget Circular A-86 entitled, "Standardization of data elements and codes in data systems", dated September 30, 1967. Office of Management and Budget Circular No. A-86 was rescinded by the Director of Office of Management and Budget on August 29, 1973.

(b) This part identifies responsibilities and provides policies and guidelines for the management of activities in the Executive Branch relating to the development, implementation and maintenance of standards for data elements and representations used in automated Federal data systems. Its provisions complement the standards and recommendations that have been or may be issued under the statistical procedures prescribed by Office of

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Management and Budget Circular A-46.

§ 6.2 Background.

(a) Recent advances in computer and communications technologies have made possible the wider use of data and programs that are developed or generated to meet mission requirements of Federal departments, agencies, and activities. While the extended use of these data and programs can contribute to reduced costs in government operations and improved services, the full advantages of these new technical capabilities cannot be realized until standards are developed and implemented which will provide for the uniform identification, definition and representation of data. These standards for data must also be accompanied by supporting standards for representing graphic characters (alphabets, numbers, and other symbols), communications and device controls. In addition, it is essential to have standards that provide for interchangeable media (e.g., tapes, cassettes and disks) covering both physical and logical specifications.

(b) There is an ever increasing need to interchange data and programs with state, local and other governments, and with industry and the public. This adds further emphasis and dimension to the need for responsive standards that will facilitate interchange.

(c) This part defines a Federal-wide program for standardizing data elements and representations which are used and interchanged in government data systems. Other approved standards and guidelines issued by the National Bureau of Standards in the Federal Information Processing Standards series of publications address related ADP subjects and areas.

§ 6.3 Objectives.

The principal goal in standardizing data elements and representations is to make maximum utilization of the data resources of the Federal Government and to avoid unnecessary duplications and incompatibilities in the collection, processing, and dissemination of data.

§ 6.4 Glossary.

Appendix A of this part provides a glossary of terms as used in this part and in descriptions of data.

§ 6.5 Types of standards.

For the purposes of this part, the following types of practices and standard are identified for data elements and representations:

(a) *De facto practices.* Those data elements and representations in current use that have not been subjected to official or formal standardization.

(b) *Unit standards.* Those data elements and representations that have been approved by an authorized official for use within that unit. (A unit for purposes of this part is any Federal organization within the executive branch of the government, which is at a lower organizational level than an executive department or independent agency).

(c) *Agency standards.* Those data elements and representations that have been approved by an authorized official for use within an executive department or independent agency.

(d) *Federal program standards.* Those data elements and representations that have been approved by the Secretary of Commerce for use in a particular program or mission where more than one executive branch department or independent agency is involved with their use. For example, those standards that could be approved and prescribed for use are those which include, but are not limited to, Federal-wide personnel, communications and transportation data systems.

(e) *Federal general standards.* Those representations that have been approved by the Secretary of Commerce for Federal-wide use by executive departments and independent agencies in all Federal-wide programs and for use in all Federal data systems. For example, this includes such representations as calendar dates, state abbreviations and codes, and codes for standard metropolitan statistical areas.

(f) *American national standards.* Those data elements and representations that have been approved for vol-

untary national use by the American National Standards Institute.

(g) *International standards.* Those data elements and representations that have been approved by the International Organization for Standardization (ISO), for voluntary use by member nations and international organizations.

§ 6.6 Policies.

The following policies apply to the development, implementation, and maintenance of data element and representation standards:

(a) Data elements and representations that are prescribed for interchange among more than one executive department or agency or with the private sector including industry, state, local, or other governments, or with the public at large will be considered for standardization as either Federal general or Federal program standards.

(b) Federal general standards are the highest level standards followed by Federal program standards, agency standards and unit standards in that order. This order establishes a precedence for standards use. For example, a Federal general standard will be used and will supplant a Federal program, agency or unit standard. Likewise a Federal program standard takes precedence over an agency or unit standard.

(c) Approved standards will be implemented by all Federal agencies in all circumstances where technical, operating and economic benefits can be expected to result. These standards will be considered on the basis of their long term benefits and advantages to the government at large. Local inconveniences or short-term conversion costs need to be recognized, but such factors will not be considered overriding deterrents to the development, implementation, and maintenance of standards that are capable of reducing overall government operating costs or providing improved government services.

(d) Existing standards will be considered for adoption as Federal general or program standards when these are determined to meet Federal require-

ments or can readily be adapted to do so.

(e) Approved standards and revisions thereto will be implemented on a time phased basis in order to minimize disruption and conversion costs. Conversion costs will be identified and considered in the submissions of annual budget estimates.

(f) Although data element and representation standards are developed and implemented to provide for the effective interchange and processing of data, Federal departments and agencies must comply with applicable statutes, regulations and executive orders to assure that sensitive or classified data are adequately protected and that only authorized disclosure or release of such data is allowed.

(g) In the formulation of standards for data elements and representations which will have implementation impact on state and local governments, industry or other segments of the private sector, arrangements will be made to establish necessary liaisons and coordinations with these interests to consider their needs and potential problems in responding to federally imposed reporting requirements.

§ 6.7 Responsibilities.

Responsibilities for the standardization of data elements and representations are outlined below:

(a) *Department of Commerce.* The Department of Commerce will provide leadership of an executive branch program for standardizing data elements and representations. Within the Department the following specific responsibilities are assigned:

(1) *Secretary of Commerce.* The Secretary of Commerce, on behalf of the President, approves all Federal Information Processing Standards. For data elements and representations, this approval will include both Federal general and Federal program standards.

(2) *National Bureau of Standards.* The National Bureau of Standards will:

(i) Arrange with appropriate executive branch departments and independent agencies to assume leadership and undertake responsibilities for the development and maintenance of spe-

cific Federal program and Federal general standards.

(ii) Arrange for the publication and promulgation of approved Federal general and Federal program standards. These will be promulgated by the National Bureau of Standards as Federal Information Processing Standards. The responsibility under this subparagraph includes the authority to modify or supersede these standards whether issued under this regulation or prior to the effective date of this regulation.

(iii) Maintain and promulgate select registers of data element and representation standards and practices that are under development or are in current use.

(iv) Provide procedures, guidelines and criteria to assist Federal departments and agencies in the development, implementation, and maintenance of standards.

(v) Provide technical assistance, as requested and within the limits of available resources to Federal departments and agencies on matters concerning the utilization of automatic data processing and standardization.

(vi) Arrange for the assessment of the need, impact, benefits and problems related to the implementation of proposed and approved standards.

(vii) Coordinate requests for exceptions to and deferments on the implementation of approved Federal standards.

(viii) Arrange for and coordinate appropriate Federal representation and participation on voluntary industry committees.

(ix) Arrange for appropriate liaison with state, local and other governments on matters of mutual interest or concern relating to Federal development, implementation, and maintenance of standards.

(b) *Departments and independent agencies.* Each of these organizations will:

(1) Implement approved Federal standards that are announced under the provisions of this part and assist the National Bureau of Standards in the assessment of the need, impact, benefits and problems related to the implementation of approved standards.

(2) Assume leadership and support of responsibilities for the development of Federal general and Federal program standards as may be mutually arranged by the National Bureau of Standards.

(3) Establish within their organizations, mechanisms for the development, implementation and maintenance of agency and unit standards where such efforts will contribute to reduced costs or improved services.

(4) Establish appropriate procedures and mechanisms within their organizations for the dissemination and implementation of approved Federal standards.

(5) Review and provide information and comments on proposed standards that are being considered for Federal adoption. This includes the analyses necessary to assess implementation impact and potential savings or improved services.

(6) Prepare and submit selected registers of data elements and representations within the data systems of the department or agency as may be arranged by the National Bureau of Standards. These registers will be used as a source reference to avoid duplication in the design of new data elements and representations and to assist in determining possible subjects for future standardization.

(7) Provide participation on committees and task groups that may be formed to develop and maintain Federal general or Federal program standards.

(8) Provide participation, as requested by the National Bureau of Standards, on committees and task groups that may be formed to develop and maintain voluntary industry standards for use nationally and internationally.

(9) Designate an office or official to act as a single point of contact on matters related to this part.

§ 6.8 Exceptions, deferments, and revisions of Federal standards.

Requests for exceptions, deferments and revisions of standards will be forwarded to the National Bureau of Standards for consideration and coordination. These requests will provide detailed justification for the exception, deferment or revision deemed

necessary. These should be submitted at least forty-five days in advance of any exception or deferral action.

§ 6.9 Effect on previously issued standards.

All standards that were issued under the provisions of Office of Management and Budget Circular No. A-86 prior to the effective date of this regulation remain in effect unless modified or superseded pursuant to the provisions of the regulations in this part.

APPENDIX A—GLOSSARY OF TERMS

This Glossary includes definitions of terms used in this part. Additional terms applicable to data standardization are provided for purposes of clarification. The terms and definitions are either from established vocabularies or have been defined for purposes of this part.

Attribute Data Element—A data element that is used to qualify or quantify another data element (e.g., "Date of Birth" and "Mailing Address" would be attribute data elements in a personnel file where the primary element(s) is/are used to identify the person).

Character Type—An indication of the type of characters or bytes to represent a value (i.e., alphabetic, numeric, pure alphabetic, pure numeric, binary, packed numeric, etc.).

Alphabetic—A representation which is expressed using only letters and punctuation symbols.

Alphanumeric—A representation which is expressed using letters, numbers, and punctuation symbols.

Binary—A representation of numbers which is expressed using only the numbers 0 and 1, e.g., 5 is expressed as 101.

Numeric—A representation which is expressed using only numbers and selected mathematical punctuation symbols.

Packed Numeric—A representation of numeric values that compresses each character representation in such a way that the original value can be recovered, e.g., in an eight bit byte, two numeric characters can be represented by two four bit units.

Pure Alphabetic—A representation which is expressed using only letters.

Pure Alphanumeric—A representation which is expressed using only letters and numbers.

Pure Numeric—A representation which is expressed using only numbers.

Composite Data Element (Data Chain)—A data element that has an ordered string of related data items that can be treated as a group or singly, e.g., a data element named

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"Date of Birth" could have the data items, "Year", "Month", and "Day of Month".

Context Dependent Definition—A statement of meaning that relies upon a situation, background, or environment for proper interpretation.

Date Code—A coded representation used to identify a data item. Usually codes are designed according to established rules and criteria, and only by chance form a phonetic word or phrase.

Data Element—A basic unit of identifiable and definable information. A data element occupies the space provided by fields in a record or blocks on a form. It has an identifying name and value or values for expressing a specific fact. For example, a data element named "Color of Eyes" could have recorded values of "Blue (a name)", "BL (an abbreviation)" or "06 (a code)." Similarly, a data element named "Age of Employee" could have a recorded value of "28 (a numeric value)."

Data Element Abbreviation—An abbreviated form of the data element name.

Data Element Definition—A statement of the meaning of a data element.

Data Element Name—A name used to identify a data element.

Data Element Source—An identification of the source or provider of the particular data element, i.e., individual, organization, sensor, computation, etc.

Data Element Tag (Data Element Code)—A symbolic tag used to identify a data element.

Data Item—The expression of a particular fact of a data element e.g., "Blue" may be a data item of the data element named "Color of eyes".

Data Item Abbreviation—An abbreviated form of the data item name.

Data Item Definition—A statement of the meaning of a data item.

Data Item Name—A name used to identify a data item.

Dependent Code—A code that has segments which are dependent upon other segments in order to provide unique identification of the coded item. Usually, codes having classification significance are dependent codes.

Field—In a record, a specific area used for representing a particular category of data, e.g., a group of card columns used to express a wage rate.

Field Length—A measure of the length (size) of a field, usually expressed in units of characters, words, or bytes.

Field Length Type—An indication of whether the field of a record is fixed or variable in length.

Fixed Length Field—A field whose length does not vary.

Variable Length Field—A field whose length varies. Usually, the boundaries of

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this type of field are identified by filed separators.

Field Separator—A character or byte used to identify the boundary between fields.

Filler Character—A specific character or bit combination used to fill the remainder of a field after justification.

Formatted Information—An arrangement of information into discrete units and structures in a manner to facilitate its access and processing. Contrasted with narrative information that is arranged according to rules of grammar.

General Definition—A statement of meaning that can be interpreted without regard to a specific situation, background, or environment.

Information Interchange—The transfer of data representing information between or among two or more points (devices, locations, organizations, or persons) of the same or different (dissimilar) information system or systems.

Justification—To adjust the value representation in a field to either the right or left boundary (margin).

Left Justify—Adjustment of a value representation to the left boundary (high order) of a field.

Right Justify—Adjustment of a value representation to the right boundary (low order) of a field.

Non-significant Code—A code that provides for the identification of a particular fact but does not yield any further information, e.g. random numbers used as codes. Contrasted with significant code.

Numeric Value—The expression of a data item which denotes a measurement, count, or mathematical concept, usually represented by numerals and a limited number of special characters (i.e., plus (+), minus(-), decimal point (.), comma (,), asterisk (*), and slant(/)).

Padding—A technique used to fill a field, record, or block with dummy data (usually zeros or spaces).

Primary Data Element—A data element or elements that is/are the subject of a record. Usually the other elements, called attribute data elements, qualify or quantify the primary data element (e.g., in a personnel field, the element(s) that is/are used to identify the individual are primary; other elements such as "Date of Birth" and "Mailing Address" are attributable data elements).

Radix Point—A character, usually a period, that separates the integer part of a number from the fractional part. In decimal (base 10) notation the radix point is called the decimal point.

Record—A collection of related elements of data treated as a unit.

Record Index—An ordered reference list of the contents of a record together with keys

or reference notations for identifying and locating the contents.

Record Layout—A description of the arrangement and structure of information in a record, including the sequence and size of each identified component.

Record Length—A measure of the length (size) of a record, usually expressed in units of characters, words, or bytes.

Record Length Type—An indication of whether the records of a file are fixed or variable in length.

Fixed Length Record—Pertaining to a file in which the records are uniform in length.

Variable Length Record—Pertaining to a file in which the records are not uniform in length.

Representation—A number, letter or symbol used to express a particular concept or meaning. It may be in the form of a name, abbreviation, code, or numeric value.

Rounding (Roundoff)—To delete the least significant digit or digits of a numeral, and to adjust the part retained in accordance with some rule.

Self-Checking Code—A code that is appended to another code to provide for validity checking. A self-checking code is derived mathematically from the characteristics of the base code.

Significant Code—A code which in addition to identifying a particular fact also yields further information, e.g., catalog numbers in addition to identifying a particular item also often indicate the classification of the item. Contrasted with non-significant code.

Truncate—To delete characters from a character string, usually from either end of the string.

Type of Code Significance—An indication of the type of significance that a particular code yields.

Collating Significance—A code designed in such a way that it facilitates ordering of the coded item.

Mnemonic Significance—A code designed in such a way as to facilitate the human recall of the name of the coded items.

Classification Significance—A code designed in such a way as to facilitate the classifying of the coded items into classes and sub-classes.

Variable Name Data Element—A data element that identifies a set (array) of similar values (data items). By varying certain identifiers in the name the entire set (array) of values can be identified. For example, a set of values that give population by State and Year could be identified by the data element "Population of (State) in (Year)" where State and Year are variable names. The variable names are used to identify particular values in an array (e.g., "Population of (New Jersey) in 1970" was 7,168,164.) In this example "New Jersey" and "1970" are

variable names used to identify a specific value "7,168,164" in an array.

PART 7—NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM PROCEDURES

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SOURCE: 49 FR 44623, Nov. 8, 1984, unless otherwise noted.

Subpart A—General Information

§ 7.1 Purpose.

The purpose of Part 7 is to set out procedures under which the National

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Voluntary Laboratory Accreditation Program (NVLAP) will function.

§ 7.2 Description and goal of NVLAP.

(a) NVLAP is a system for accrediting testing laboratories found competent to perform specific tests or types of tests. Competence is defined as the ability of a laboratory to meet the NVLAP conditions (§ 7.32) and to conform to the criteria (§ 7.33) as tailored and interpreted for the test methods, types of test methods, products, services, or standards for which the laboratory seeks accreditation.

(b) NVLAP is a voluntary system which:

(1) Provides national recognition for competent laboratories;

(2) Provides laboratory management with a quality assurance check of the performance of their laboratories;

(3) Identifies competent laboratories for use by regulatory agencies, purchasing authorities, and product certification systems; and

(4) Provides laboratories with guidance from technical experts to aid them in reaching a higher level of performance resulting in the generation of improved engineering and product information.

(c) NVLAP is comprised of a series of laboratory accreditation programs (LAPs) which are established on the basis of requests and demonstrated need. The specific test methods, types of test methods, products, services, or standards to be included in a LAP must be requested. The Director of the National Bureau of Standards (NBS) does not unilaterally propose or decide the scope of a LAP. Communication with other laboratory accreditation systems is fostered to encourage development of common criteria and approaches to accreditation and to promote the domestic, foreign, and international acceptance of test data produced by the accredited laboratories.

(d) NVLAP is carried out to be compatible with and recognized by domestic, foreign, and international systems for laboratory accreditation so as to enhance the universal acceptance of test data produced by NVLAP-accredited laboratories.

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§ 7.3 Layout of procedures.

Subpart A describes considerations which relate in general to all aspects of NVLAP. Subpart B describes how new LAPs are requested, developed and announced, and how LAPs are terminated. Subpart C describes procedures for accrediting laboratories. Subpart D sets out the conditions and criteria for NVLAP accreditation.

§ 7.4 Definitions.

Accreditation criteria means a set of requirements used by an accrediting body which a laboratory must meet to be accredited.

Advisory Committee means the National Laboratory Accreditation Advisory Committee.

Director of NBS means the Director of the National Bureau of Standards or designee.

Director of OPSP means the Director of the NBS Office of Product Standards Policy or designee.

Laboratory accreditation is a formal recognition that a testing laboratory is competent to carry out specific tests or types of tests.

Laboratory assessment means the on-site examination of a testing laboratory to evaluate its compliance with specified criteria.

LAP means a laboratory accreditation program established and administered under NVLAP.

NBS means the National Bureau of Standards.

NVLAP means the National Voluntary Laboratory Accreditation Program.

OPSP means the NBS Office of Product Standards Policy.

Person means associations, companies, corporations, educational institutions, firms, government agencies at the federal, state and local level, partnerships, and societies—as well as divisions thereof—and individuals.

Product means a type or a category of manufactured goods, constructions, installations, and natural and processed materials, or those associated services whose characterization, classification, or functional performance is specified by standards or test methods.

Proficiency testing means methods of checking laboratory testing per-

formance by means of interlaboratory tests.

Testing laboratory is a laboratory which measures, examines, tests, calibrates or otherwise determines the characteristic or performance of products.

Traceability of the accuracy of measuring instruments is a documented chain of comparison connecting the accuracy of a measuring instrument to other measuring instruments of higher accuracy and ultimately to a primary standard.

§ 7.5 Establishment and functions of a National Laboratory Accreditation Advisory Committee.

(a) The Director of NBS shall establish a National Laboratory Accreditation Advisory Committee (Advisory Committee) and appoint its chairperson and members following the filing of a charter setting forth the purpose and nature of the committee.

(b) The composition of the Advisory Committee will be approximately as follows:

(1) One-third from federal, state and local governments;

(2) One-third from testing laboratories (independent, corporate, and academic); and

(3) One-third from users of testing laboratories, academia, consultants, and consumers.

(c) The Advisory Committee will be governed by the Federal Advisory Committee Act (5 U.S.C. App. 2). Persons selected to serve on the Advisory Committee may be paid travel expenses and per diem.

(d) The Advisory Committee shall function solely in an advisory capacity with functions to include the following:

(1) Assessing the future and continuing role of NVLAP and laboratory accreditation in terms of the changing requirements of industry and commerce;

(2) Advising on the technical requirements of testing laboratories and those served by the laboratories;

(3) Advising on the necessity and implementation of proposed amendments to the criteria referenced in § 7.33;

(4) Evaluating the interaction of other laboratory accreditation systems with NVLAP; and

(5) Reviewing and giving recommendations on the development of international accreditation activities and assessing the impact of such activities on NVLAP.

(e) The Advisory Committee shall meet periodically as called upon by the Director of the NBS Office of Product Standards Policy (OPSP) or may be consulted through periodic mailings from the Director of OPSP.

§ 7.6 User information.

(a) The Director of OPSP shall prepare and publish at least once each year a directory of accredited laboratories.

(b) The Director of OPSP shall periodically prepare supplements to the directory of accredited laboratories covering new accreditation actions taken, including initial accreditations, renewals, suspensions, terminations, and revocations.

§ 7.7 Information collection requirements.

The information collection requirements contained in these NVLAP procedures have been approved by the Office of Management and Budget under the Paperwork Reduction Act and have been assigned OMB control number 0652-0003.

Subpart B—Establishing a LAP

§ 7.11 Requesting a LAP.

(a) Any person may request the Director of NBS to establish a LAP.

(b) Each request must be in writing and must include:

(1) The scope of the LAP in terms of products or testing services proposed for inclusion;

(2) Specific identification of the applicable standards and test methods including appropriate designations, and the organizations or standards writing bodies having responsibility for them;

(3) A statement of need for the LAP including:

(i) Technical and economic reasons why the LAP would benefit the public interest;

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(ii) Evidence of a national need to accredit testing laboratories for the specific scope beyond that served by an existing laboratory accreditation program in the public or private sector;

(iii) An estimate of the number of laboratories that may seek accreditation; and

(iv) An estimate of the number and nature of the users of such laboratories; and

(4) A statement of the extent to which the requestor is willing to support necessary developmental aspects of the LAP with funding and personnel.

(c) The Director of OPSP may request clarification of the information required by paragraph (b) of this section.

(d) Before determining the need for a LAP, the Director of NBS shall publish a FEDERAL REGISTER notice of the receipt of a LAP request if the request complies with § 7.11(b). The notice will:

(1) Describe the scope of the requested LAP;

(2) Indicate how to obtain a copy of the request; and

(3) State that anyone may submit comments on the need for a LAP to the Director of OPSP within 60 days of the date of the notice.

§ 7.12 LAP development decision.

(a) The Director of NBS shall establish all LAPs on the basis of need. Government agencies and private sector organizations may establish the need by using §§ 7.13 and 7.14.

(b) After receipt of the request, the Director of NBS shall analyze it to determine if a need exists for the requested LAP. In making this determination, the Director of NBS shall consider the following:

(1) The needs and scope of the LAP initially requested;

(2) The needs and scope of the user population;

(3) The nature and content of other relevant public and private sector laboratory accreditation programs;

(4) Compatibility with the criteria referenced in § 7.33;

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(5) The importance of the requested LAP to commerce, consumer well-being, or the public health and safety;

(6) The economic and technical feasibility of accrediting testing laboratories for the test methods, types of test methods, products, services, or standards requested; and

(7) Recommendations from written comments for altering the scope of the requested LAP by adding or deleting test methods, types of test methods, products, services, or standards.

(c) If the Director of NBS decides that a need has been demonstrated, and if resources are available to develop a LAP, the Director of OPSP shall notify interested persons of the decision to proceed with development of a LAP.

(d) If the Director of NBS concludes that there is a need for a LAP but there are no resources for development, the Director of OPSP shall notify the requestor and other interested persons of the decision not to proceed until resources become available.

(e) If the Director of NBS decides that a need for a LAP has not been demonstrated, the Director of OPSP shall notify the requestor and other interested persons of the decision and the reasons not to proceed with development of a LAP.

§ 7.13 Request from a government agency.

(a) Any federal, state or local agency responsible for regulatory or public service programs established under statute or code, which has determined a need to accredit testing laboratories within the context of its programs, may request the Director of NBS to establish a LAP.

(b) Each request must be in writing and must include the information required in § 7.11(b) and:

(1) A description of the procedures followed or a citation of the specific authority used to determine the need for a LAP; and

(2) For state and local government agencies, a statement of why the LAP should be of national scope.

(c) The Director of OPSP may request clarification of the information

required by paragraph (b) of this section.

(d) Before deciding to proceed with the development of a LAP, the Director of NBS shall publish a FEDERAL REGISTER notice of the receipt of a LAP request. The notice will indicate how to obtain a copy of the request and will state that anyone may submit comments on the need for a LAP to the requesting government agency within 60 days of the date of the notice.

(e) The Director of OPSP shall notify interested persons of the decision to proceed or not to proceed with development of a LAP.

§ 7.14 Request from a private sector organization.

(a) Any private sector organization which has determined a need to accredit testing laboratories for specific products or testing services, may request the Director of NBS to establish a LAP if it uses procedures meeting the following conditions:

(1) Public notice of meetings and other activities including requests for LAPs is provided in a timely fashion and is distributed to reach the attention of interested persons;

(2) Meetings are open and participation in activities is available to interested persons;

(3) Decisions reached by the private sector organization in the development of a request for a LAP represent substantial agreement of the interested persons;

(4) Prompt consideration is given to the expressed views and concerns of interested persons;

(5) Adequate and impartial mechanisms for handling substantive and procedural complaints and appeals are in place; and

(6) Appropriate records of all meetings are maintained and the official procedures used by the private sector organization to make a formal request for a LAP are made available upon request to any interested person.

(b) Each request must be in writing and must include the information required in § 7.11(b) and a description of the way in which the organization has met the conditions specified in paragraph (a) of this section.

(c) The Director of OPSP may request clarification of the information required by paragraph (b) of this section.

(d) Before deciding to proceed with development of a LAP, the Director of NBS shall publish a FEDERAL REGISTER notice of the receipt of a LAP request. The notice will indicate how to obtain a copy of the request and will state that anyone may submit comments on the need for a LAP to the requesting private sector organization within 60 days of the date of the notice.

(e) The Director of OPSP shall notify interested persons of the decision to proceed or not to proceed with development of a LAP.

§ 7.15 Development of technical requirements.

(a) Technical requirements for accreditation are specific for each LAP. The requirements tailor the criteria referenced in § 7.33 to the test methods, types of test methods, products, services, or standards covered by the LAP.

(b) The Director of OPSP shall develop the technical requirements based on expert advice. This advice may be obtained through one or more informal public workshops or other suitable means.

(c) The Director of OPSP shall make every reasonable effort to ensure that the affected testing community within the scope of the LAP is informed of any planned workshop. Summary minutes of each workshop will be prepared. A copy of the minutes will be made available for inspection and copying at the NBS Records Inspection Facility.

§ 7.16 Coordination with Federal agencies.

As a means of assuring effective and meaningful cooperation, input, and participation by those federal agencies that may have an interest in and may be affected by established LAPs, the Director of OPSP shall communicate and consult with appropriate officials within those agencies.

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§ 7.17 Announcing the establishment of a LAP.

(a) When the Director of OPSP has completed the development of the technical requirements of the LAP and established a schedule of fees for accreditation, the Director of OPSP shall publish a notice in the **FEDERAL REGISTER** announcing the establishment of the LAP.

(b) The notice will:

(1) Identify the scope of the LAP; and

(2) Advise how to apply for accreditation.

(c) The Director of OPSP shall establish fees in amounts that will enable the LAP to be self-sufficient. The Director of OPSP shall revise the fees when necessary to maintain self-sufficiency.

§ 7.18 Adding to an established LAP.

Written requests will be considered from any person wishing to add specific standards, test methods, or types of test methods to an established or developing LAP. The Director of OPSP may choose to make them available for accreditation under a LAP when:

(a) The additional standards, test methods, or types of test methods requested are directly relevant to the LAP;

(b) It is feasible and practical to accredit testing laboratories for the additional standards, test methods, or types of test methods; and

(c) It is likely that laboratories will seek accreditation for the additional standards, test methods, or types of test methods.

§ 7.19 Termination of a LAP.

(a) The Director of NBS may terminate a LAP when the Director of NBS determines that a need no longer exists to accredit testing laboratories for the products or testing services covered under the scope of the LAP. In the event that the Director of NBS proposes to terminate a LAP, a notice will be published in the **FEDERAL REGISTER** setting forth the basis for that determination.

(b) The notice published under paragraph (a) of this section will provide a 60-day period for submitting written comments on the proposal to termi-

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nate the LAP. All written comments will be made available for public inspection and copying at the NBS Records Inspection Facility.

(c) After the comment period, the Director of NBS shall determine if public support exists for the continuation of the LAP. If public comments support the continuation of the LAP, the Director of NBS shall publish a **FEDERAL REGISTER** notice announcing the continuation of the LAP. If public support does not exist for continuation, the LAP will be terminated effective 90 days after the date of the published notice of intent to terminate the LAP.

(d) If the LAP is terminated, the Director of OPSP shall no longer grant or renew accreditations following the effective date of termination. Accreditations previously granted will remain effective until their expiration date unless terminated voluntarily by the laboratory or revoked by the Director of OPSP.

Subpart C—Accrediting a Laboratory

§ 7.21 Applying for accreditation.

(a) Any laboratory may request an application for accreditation in any established LAPs in accordance with instructions provided in notices announcing the formal establishment of LAPs.

(b) Upon receipt of a laboratory's application, the Director of OPSP shall:

(1) Acknowledge receipt of the application;

(2) Request further information, if necessary;

(3) Confirm payment of fees before proceeding with the accreditation process; and

(4) Specify the next step(s) in the accreditation process.

(c) In accepting an application from a foreign-based laboratory, the Director of OPSP shall take into consideration the policy of the host government regarding the acceptance of test data from laboratories accredited by NVLAP or other foreign accreditation systems.

§ 7.22 Assessing and evaluating a laboratory.

(a) Information used to evaluate a laboratory's compliance with the conditions for accreditation set out in § 7.32, the criteria for accreditation set out in § 7.33, and the technical requirements established for each LAP will include:

- (1) On-site assessment reports;
- (2) Laboratory responses to identified deficiencies; and
- (3) Laboratory performance on proficiency tests.

(b) The Director of OPSP shall arrange the assessment and evaluation of applicant laboratories by contract or other means in such a way as to minimize potential conflicts of interest.

(c) The Director of OPSP shall inform each applicant laboratory of any action(s) that the laboratory must take to complete the requirements for assessment and evaluation.

§ 7.23 Granting and renewing accreditation.

(a) The Director of OPSP, after reviewing an evaluation report, shall grant or renew, suspend, or propose to deny or revoke accreditation of an applicant laboratory, no later than 30 days following the date of submittal of the report. If accreditation action is not taken within this time limit, the Director of OPSP shall notify the laboratory stating the reasons for the delay.

(b) If accreditation is granted or renewed, the Director of OPSP shall:

- (1) Provide a certificate of accreditation to the laboratory;
- (2) Identify the scope and terms of the laboratory's accreditation;
- (3) Provide guidance on referencing the laboratory's accredited status, and the use of the NVLAP logo by the laboratory and its clients, as needed; and
- (4) Remind the laboratory that accreditation does not relieve it from complying with applicable federal, state, and local laws and regulations.

(c) The Director of OPSP shall notify an accredited laboratory at least 30 days before its accreditation expires advising of the action(s) the laboratory must take to renew its accreditation.

(d) If an accredited laboratory fails to complete the assessment and evaluation process for renewal before its accreditation expires, the Director of OPSP shall notify the laboratory stating that its accreditation has expired and reiterating the action(s) the laboratory must take to renew its accreditation.

§ 7.24 Denying, suspending, and revoking accreditation.

(a) If the Director of OPSP proposes to deny or revoke accreditation of a laboratory, the Director of OPSP shall inform the laboratory of the reasons for the proposed denial or revocation and the procedure for appealing such a decision.

(b) The laboratory will have 30 days from the date of receipt of the proposed denial or revocation letter to request a hearing under the provisions of 5 U.S.C. 556. If the laboratory requests a hearing, the proposed denial or revocation will be stayed pending the outcome of the hearing held under provisions of 5 U.S.C. 556. The proposed denial or revocation will become final through the issuance of a written decision to the laboratory in the event that the laboratory does not appeal the proposed denial or revocation within that 30-day period.

(c) If the Director of OPSP finds that an accredited laboratory has violated the terms of its accreditation or the provisions of these procedures, the Director of OPSP may, after consultation with the laboratory, suspend the laboratory's accreditation, or advise of his/her intent to revoke its accreditation. If accreditation is suspended, the Director of OPSP shall notify the laboratory of that action stating the reasons for and conditions of the suspension and specifying the action(s) the laboratory must take to have its accreditation reinstated. Conditions of suspension will include prohibiting the laboratory from using the NVLAP logo on its test reports during the suspension period. The determination of the Director of OPSP whether to suspend or to propose revocation of a laboratory's accreditation will depend on the nature of the violation(s) of the terms of its accreditation.

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(d) A laboratory whose accreditation has been denied, revoked, terminated, or expired, or which has withdrawn its application before being accredited, may reapply and be accredited if the laboratory:

- (1) Completes the assessment and evaluation process; and
- (2) Meets the conditions and criteria for accreditation that are set out in Subpart D;

§ 7.25 Voluntary termination of accreditation.

A laboratory may at any time terminate its participation and responsibilities as an accredited laboratory by advising the Director of OPSP in writing of its desire to do so. The Director of OPSP shall terminate the laboratory's accreditation and shall notify the laboratory stating that its accreditation has been terminated in response to its request.

Subpart D—Conditions and Criteria for Accreditation

§ 7.31 Application of accreditation conditions and criteria.

(a) To become accredited and maintain accreditation, a laboratory must meet the conditions for accreditation set out in § 7.32 and the criteria set out in § 7.33 as tailored for specific LAPs.

(b) The conditions leading to accreditation include acceptance of the responsibilities of an accredited laboratory and requirements for information disclosure.

(c) The criteria are tailored and interpreted for the test methods, types of test methods, products, services or standards of the relevant LAP. These tailored criteria are the technical requirements for accreditation developed through the procedures of § 7.15.

(d) In applying the conditions, criteria, and technical requirements for accreditation, the Director of OPSP shall not:

- (1) Prohibit accreditation solely on the basis of a laboratory's affiliation or nonaffiliation with manufacturing, distributing, or vending organizations, or because the laboratory is a foreign firm; or

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(2) Develop, modify, or promulgate test methods, standards, or comparable administrative rules.

§ 7.32 Conditions for accreditation.

(a) To become accredited and maintain accreditation, a laboratory shall agree in writing to:

- (1) Be assessed and evaluated initially and on a periodic basis;
- (2) Demonstrate, on request, that it is able to perform the tests representative of those for which it is seeking accreditation;

(3) Pay all relevant fees;

(4) Participate in proficiency testing as required;

(5) Be capable of performing the tests for which it is accredited according to the latest version of the test method within one year after its publication or within another time limit specified by the Director of OPSP;

(6) Limit the representation of the scope of its accreditation to only those tests or services for which accreditation is granted;

(7) Limit all its test work or services for clients to those areas where competence and capacity are available;

(8) Limit advertising of its accredited status to letterheads, brochures, test reports, and professional, technical, trade or other laboratory services publications, and use the NVLAP logo under guidance provided by the Director of OPSP;

(9) Inform its clients that the laboratory's accreditation or any of its test reports in no way constitutes or implies product certification, approval, or endorsement by NBS;

(10) Maintain records of all actions taken in response to testing complaints for a minimum of one year;

(11) Maintain an independent decisional relationship between itself and its clients, affiliates, or other organizations so that the laboratory's capacity to render test reports objectively and without bias is not adversely affected;

(12) Report to the Director of OPSP within 30 days any major changes involving the location, ownership, management structure, authorized representative, approved signatories, or facilities of the laboratory; and

(13) Return to the Director of OPSP the certificate of accreditation for possible revision or other action should it:

(i) Be requested to do so by the Director of OPSP;

(ii) Voluntarily terminate its accredited status; or

(iii) Become unable to conform to any of these conditions or the applicable criteria of § 7.33 and related technical requirements.

(b) To become accredited and maintain accreditation, a laboratory shall supply, upon request, the following information:

(1) Legal name and full address;

(2) Ownership of the laboratory;

(3) Organization chart defining relationships that are relevant to performing testing covered in the accreditation request;

(4) General description of the laboratory, including its facilities and scope of operation;

(5) Name and telephone number of the authorized representative of the laboratory;

(6) Names or titles and qualifications of laboratory staff nominated to serve as approved signatories of test reports that reference NVLAP accreditation; and

(7) Other information as may be needed for the specific LAP(s) in which accreditation is sought.

§ 7.33 Criteria for accreditation.

(a) *Quality System.* (1) The laboratory shall operate under an internal quality assurance program appropriate to the type, range, and volume of work performed. The quality assurance program must be designed to ensure the required degree of accuracy and precision of the laboratory's work and should include key elements of document control, sample control, data validation, and corrective action. The quality assurance program must be documented in a quality manual or equivalent (e.g., operations notebook) which is available for use by laboratory staff. A person(s) must be identified as having responsibility for maintaining the quality manual.

(2) The quality manual must include as appropriate:

(i) The laboratory's quality assurance policies including procedures for

corrective action for detected test discrepancies;

(ii) Quality assurance responsibilities for each function of the laboratory;

(iii) Specific quality assurance practices and procedures for each test, type of test, or other specifically delineated function performed;

(iv) Specific procedures for retesting, control charts, reference materials, and interlaboratory tests; and

(v) Procedures for dealing with testing complaints.

(3) The laboratory shall periodically review its quality assurance system by or on behalf of management to ensure its continued effectiveness. These reviews must be recorded with details of any corrective action taken.

(b) *Staff.* (1) The laboratory shall:

(i) Be staffed by individuals having the necessary education, training, technical knowledge, and experience for their assigned functions; and

(ii) Have a job description for each professional, scientific, supervisory and technical position, including the necessary education, training, technical knowledge, and experience.

(2) The laboratory shall document the test methods each staff member has been assigned to perform.

(3) The laboratory shall have a description of its training program for ensuring that new or untrained staff are able to perform tests properly and uniformly to the requisite degree of precision and accuracy.

(4) The laboratory shall be organized:

(i) So that staff members are not subjected to undue pressure or inducement that might influence their judgment or results of their work; and

(ii) In such a way that staff members are aware of both the extent and the limitation of their area of responsibility.

(5) The laboratory shall have a technical manager (or similar title) who has overall responsibility for the technical operations of the laboratory.

(6) The laboratory shall have one or more signatories approved by the Director of OPSP to sign test reports that reference NVLAP accreditation. Approved signatories shall:

(i) Be competent to make a critical evaluation of test results; and

(ii) Occupy positions within the laboratory's organization which makes them responsible for the adequacy of test results.

(c) *Facilities and Equipment.* (1) The laboratory shall be furnished with all items of equipment and facilities for the correct performance of the tests and measurements for which accreditation is granted and shall have adequate space, lighting, and environmental control, and monitoring to ensure compliance with prescribed testing conditions.

(2) All equipment must be properly maintained to ensure protection from corrosion and other causes of deterioration. Instructions for a proper maintenance procedure for those items of equipment which require periodic maintenance must be available. Any item of equipment or component thereof which has been subjected to overloading or mishandling, gives suspect results, or has been shown by calibration or otherwise to be defective, must be taken out of service and clearly labelled until it has been repaired. When placed back in service, this equipment must be shown by test or calibration to be performing its function satisfactorily.

(3) Records of each major item of equipment must be maintained. Each record must include:

- (i) The name of the item of equipment;
- (ii) The manufacturer's name and type, identification and serial number;
- (iii) Date received and date placed in service;
- (iv) Current location, where appropriate;
- (v) Details of maintenance; and
- (vi) Date of last calibration, next calibration due date, and calibration report references.

(d) *Calibration.* The laboratory shall:

- (1) Calibrate new testing equipment before putting it into service;
- (2) Recalibrate, at regular intervals, in-service testing equipment with the calibration status readily available to the operator;
- (3) Perform checks of in-service testing equipment between the regular calibration intervals, where relevant;

(4) Maintain adequate records of all calibrations and recalibrations; and

(5) Provide traceability of all calibrations and reference standards of measurement where these standards exist. Where traceability of measurements to primary (national or international) standards is not applicable, the laboratory shall provide satisfactory evidence of the accuracy or reliability of test results (e.g., by participation in a suitable program of interlaboratory comparison).

(e) *Test Methods and Procedures.* The laboratory shall:

(1) Conform in all respects with the test methods and procedures required by the specifications against which the test item is to be tested, except that whenever a departure becomes necessary for technical reasons the departure must be acceptable to the client and recorded in the test report;

(2) Have data to prove that any departures from standard methods and/or procedures due to apparatus design or for other reasons do not detract from the expected or required precision of the measurement;

(3) Maintain a test plan for implementing testing standards and procedures including adequate instructions on the use and operation of all relevant equipment, on the handling and preparation of test items (where applicable), and on standard testing techniques where the absence of such instructions could compromise the test. All instructions, testing standards, specifications, manuals, and reference data relevant to the work of the laboratory must be kept up-to-date and made readily available to the staff;

(4) Maintain measures for the detection and resolution of in-process testing discrepancies for manual and automatic test equipment and electronic data processing equipment, where applicable;

(5) Maintain a system for identifying samples or items to be tested, which remains in force from the date of receipt of the item to the date of its disposal, either through documents or through marking to ensure that there is no confusion regarding the identity of the samples or test items and the results of the measurements made; and

(6) Maintain rules for the receipt, retention, and disposal of test items, including procedures for storage and handling precautions to prevent damage to test items which could invalidate the test results. Any relevant instructions provided with the tested item must be observed.

(f) *Records.* The laboratory shall:

(1) Maintain a record system which contains sufficient information to permit verification of any issued report;

(2) Retain all original observations, calculations and derived data, and calibration records for one year unless a longer period is specified; and

(3) Hold records secure and in confidence, as required.

(g) *Test Reports.* (1) The laboratory shall issue test reports of its work which accurately, clearly, and unambiguously present the specified test results and all required information. Each test report must include the following information as applicable:

(i) Name and address of the laboratory;

(ii) Identification of the test report by serial number, date, or other appropriate means;

(iii) Name and address of client;

(iv) Description and identification of the test specimen, sample, or lot of material represented;

(v) Identification of the test specification, method, or procedure used;

(vi) Description of sampling procedure, if appropriate;

(vii) Any deviations, additions to, or exclusions from the test specifications;

(viii) Measurements, examinations, and derived results supported by tables, graphs, sketches, and photographs, as appropriate, and any failures identified;

(ix) A statement of measurement uncertainty, where relevant;

(x) Identification of the organization and the person accepting technical responsibility for the test report and date of issue;

(xi) A statement that the report must not be reproduced except in full with the approval of the laboratory; and

(xii) A statement to the effect that the test report relates only to the items tested.

(2) The laboratory shall issue corrections or additions to a test report only by a further document suitably marked, e.g. "Supplement to test report serial number * * *," which meets the relevant requirements of § 7.33(g)(1).

(3) The laboratory shall retain a copy of each test report issued for one year unless a longer period is specified by the Director of OPSP.

(4) The laboratory shall ensure that all test reports endorsed with the NVLAP logo are signed by an approved signatory.

PART 8—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF COM- MERCE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Subpart A—General Provisions; Prohibitions: Nondiscrimination Clause; Applicability to Programs

Sec.

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APPENDIX A—PROGRAMS COVERED BY TITLE VI

AUTHORITY: Sec. 602, Civil Rights Act of 1964 (42 U.S.C. 2000d-1).

SOURCE: 38 FR 17938, July 5, 1973, unless otherwise noted.

Subpart A—General Provisions; Prohibitions: Nondiscrimination Clause; Applicability to Programs

§ 8.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance from the Department of Commerce. This part is consistent with achievement of the objectives of the statutes authorizing the financial assistance given by the Department of Commerce as provided in section 602 of the Act.

§ 8.2 Application of this part.

(a) This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the federally assisted programs listed in Appendix A to this part and as said Appendix may be amended. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after January 9, 1965, pursuant to an application approved prior to such effective date.

(b) This part does not apply to (1) any Federal financial assistance by way of insurance or guaranty contracts, (2) money paid, property transferred, or other assistance extended under any such program before January 9, 1965, except where such assistance was subject to the title VI regulations of this Department or of any other agency whose responsibilities are now exercised by this Department, (3) any assistance to any individual who is the ultimate beneficiary under any such program, or (4) any employment practice, under any such program, of any employer, employment agency, or labor organization except to the extent described in § 8.4(c). The fact that a program is not listed in Appendix A shall not mean, if title VI of the Act is otherwise applicable, that such program is not covered. Other

programs under statutes now in force or hereinafter enacted may be added to the list by notice published in the FEDERAL REGISTER.

§ 8.3 Definitions.

(a) "Department" means the Department of Commerce, and includes each and all of its operating and equivalent other units.

(b) "Secretary" means the Secretary of Commerce.

(c) "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means anyone of the foregoing.

(d) "Person" means an individual in the United States who is or is eligible to be a participant in or an ultimate beneficiary of any program which receives Federal financial assistance, and includes an individual who is an owner or member of a firm, corporation, or other business or organization which is or is eligible to be a participant in or an ultimate beneficiary of such a program. Where a primary objective of the Federal financial assistance to a program is to provide employment, "person" includes employees or applicants for employment of a recipient or other party subject to this part under such program.

(e) "Responsible department official" with respect to any program receiving Federal financial assistance means the Secretary or other official of the Department who by law or by delegation has the principal authority within the Department for the administration of a law extending such assistance. It also means any officials so designated by due delegation of authority within the Department to act in such capacity with regard to any program under this part.

(f) "Federal financial assistance" includes (1) grants, loans, or agreements for participation in loans, of Federal funds, (2) the grant or donation of Federal property or interests in property, (3) the sale or lease of, or the permission to use (on other than a casual or transient basis), Federal

property or any interest in such property or in property in which the Federal Government has an interest, without consideration, or at a nominal consideration, or at a consideration which is reduced, for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to or use by the recipient, (4) waiver of charges which would normally be made for the furnishing of Government services, (5) the detail of Federal personnel, (6) technical assistance, and (7) any Federal agreement, arrangement, contract, or other instrument which has as one of its purposes the provision of assistance.

(g) "Program" includes any program, project, or activity for the planning or provision of services, financial aid, property, other benefits, or facilities for furnishing services, financial aid, property, or other benefits, whether provided by the recipient or by others through contracts or other arrangements with the recipient, with the aid of Federal financial assistance, or with the aid of any non-Federal funds, property, facilities or other resources which are provided to meet the conditions under which Federal financial assistance is extended or which utilizes federally assisted property, facilities or resources.

(h) "Facility" includes all or any portion of structures, equipment, vessels, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, contract for use, or acquisition of facilities.

(i) "Recipient" means any governmental, public or private agency, institution, organization, or other entity, or any individual, who or which is an applicant for Federal financial assistance, or to whom Federal financial assistance is extended directly or through another recipient for or in connection with any program. Recipient further includes a subgrantee, an entity which leases or operates a facility for or on behalf of a recipient, and any successors, assignees, or transferees of any kind of the recipient, but does not include any person who is an ultimate beneficiary under any program.

(j) "Primary recipient" means any recipient which is authorized or required to extend or distribute Federal financial assistance to another recipient for the purpose of carrying out a program.

(k) "Applicant" means one who submits an application, request, or plan required to be approved by a responsible Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

(l) "Other parties subject to this part" includes any governmental, public or private agency, institution, organization, or other entity, or any individual, who or which, like a recipient, is not to engage in discriminatory acts with respect to applicable persons covered by this part, because of his or its direct or substantial participation in any program, such as a contractor, subcontractor, provider of employment, or user of facilities or services provided under any program.

§ 8.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) *Specific discriminatory acts prohibited.* (1) A recipient of Federal financial assistance, or other party subject to this part under any program to which this part applies, shall not participate, directly or through contractual or other arrangements, in any act or course of conduct which, on the ground of race, color, or national origin:

(i) Denies to a person any service, financial aid, or other benefit provided under the program;

(ii) Provides any service, financial aid, or other benefit, to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subjects a person to segregation or separate or other discriminatory treatment in any matter related to his receipt (or nonreceipt) of any such

service, financial aid, property, or other benefit under the program.

(iv) Restricts a person in any way in the enjoyment of services, facilities, or any other advantage, privilege, property, or benefit provided to others under the programs;

(v) Treats a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Denies a person an opportunity to participate in the program through the provision of property or services or otherwise, or affords him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section);

(vii) Denies a person the same opportunity or consideration given others to be selected or retained or otherwise to participate as a contractor, subcontractor, or subgrantee when a program is applicable thereto;

(viii) Denies a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, or other party subject to this part under any program, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of persons to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program, shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect any persons of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or other party subject to this part may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies, on the grounds of race, color or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided or made available in or through or utilizing a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship,

use of facilities, and treatment of employees). Such recipients and other parties subject to this part shall take affirmative action to ensure that applicants are employed, and employees are treated during employment without regard to their race, color, or national origin. Such recipients and other parties subject to this part shall, as may be required by supplemental regulations, develop a written affirmative action program. The requirements applicable to construction employment under any such program shall be in addition to those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it. Federal financial assistance to programs under laws funded or administered by the Department which has as a primary objective the providing of employment include those set forth in Appendix A II of this part.

(2) Where a primary objective of the Federal financial assistance to a program to which this part applies is not to provide employment, but discrimination on the grounds of race, color, or national origin, in the employment practices of the recipient or other party subject to this part, tends, on the grounds of race, color, or national origin, to exclude persons from participating in, to deny them the benefits of, or to subject them to discrimination under any such program, the provisions of paragraph (c)(1) of this section shall apply to the employment practices of the recipient or other party subject to this part, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of such persons.

[38 FR 17938, July 5, 1973; 38 FR 23777, Sept. 4, 1973]

§ 8.5 Nondiscrimination clause.

(a) *Applicability.* Every application for, and every grant, loan, or contract authorizing approval of, Federal financial assistance to carry out a program and to provide a facility subject to this part, and every modification or amendment thereof, shall, as a condition to its approval and to the extension of any Federal financial assistance pursuant thereto, contain or be accompanied by an assurance that the

program will be conducted in compliance with all requirements imposed by or pursuant to this part. The assurances shall be set forth in a nondiscrimination clause. The responsible Department official shall specify the form and contents of the nondiscrimination clause for each program as appropriate.

(b) *Contents.* Without limiting its scope or language in any way, a nondiscrimination clause shall contain, where determined to be appropriate, and in an appropriate form, reference to the following assurances, undertakings, and other provisions:

(1) That the recipient or other party subject to this part will not participate directly or indirectly in the discrimination prohibited by § 8.4, including employment practices when a program covering such is involved.

(2) That when employment practices are covered, the recipient or other party subject to this part will (i) in all solicitations or advertisements for employees placed by or for the recipient, state that qualified applicants will receive consideration for employment without regard to race, color, or national origin; (ii) notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding of the recipient's commitments under this section; (iii) post the nondiscrimination clause and the notice to labor unions in conspicuous places available to employees and applicants for employment; and (iv) otherwise comply with the requirements of § 8.4(c).

(3) That in a program involving continuing Federal financial assistance, the recipient thereunder (i) will state that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (ii) will provide for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that all recipients of Federal financial assistance under such program and any other parties connected therewith subject to this part will comply with all requirements imposed by or pursuant to this part.

(4) That the recipient agrees to secure the compliance or to cooperate actively with the Department to secure the compliance by others with this part and the nondiscrimination clause as may be directed under an applicable program. For instance, the recipient may be requested by the responsible Department official to undertake and agree (i) to obtain or enforce or to assist and cooperate actively with the responsible Department official in obtaining or enforcing, the compliance of other recipients or of other parties subject to this part with the nondiscrimination required by this part; (ii) to insert appropriate nondiscrimination clauses in the respective contracts with or grants to such parties; (iii) to obtain and to furnish to the responsible Department official such information as he may require for the supervision or securing of such compliance; (iv) to carry out sanctions for noncompliance with the obligations imposed upon recipients and other parties subject to this part; and (v) to comply with such additional provisions as the responsible Department official deems appropriate to establish and protect the interests of the United States in the enforcement of these obligations. In the event that the cooperating recipient becomes involved in litigation with a noncomplying party as a result of such departmental direction, the cooperating recipient may request the Department to enter into such litigation to protect the interests of the United States.

(5) In the case of real property, structures or improvements thereon, or interests therein, which are acquired for a program receiving Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or posses-

sion of the property, whichever, is longer. Where no transfer of property is involved, but property is improved with Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on such property for the purposes for which the property was transferred, the responsible Department official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate to forebear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(6) In programs receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance the nondiscrimination requirements of this part shall extend to any facility located wholly or in part in such space.

(7) That a recipient shall not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly.

(8) Provisions specifying the extent to which like assurances will be required of subgrantees, contractors and subcontractors, lessees, transferees, successors in interest, and other participants in the program.

(9) Provisions which give the United States a right to seek judicial enforcement of the assurances.

(10) In the case where any assurances are required from an academic, a medical care, detention or correctional, or any other institution or facility, insofar as the assurances relate to the institution's practices with respect to the admission, care, or other treatment of persons by the institution or with respect to the opportunity of persons to participate in the receiving or providing of services, treatment, or benefits, such assurances shall be applicable to the entire institution or facility. That requirement may be waived by the responsible Department official if the party furnishing the assurances establishes to the satisfaction of the responsible Department official that the practices in designated parts or programs of the institution or facility will in no way affect its practices in the program of the institution or facility for which Federal financial assistance is or is sought to be provided, or affect the beneficiaries of or participants in such program. If in any such case the assistance is or is sought for the construction of a facility or part of a facility, the assurances shall in any event extend to the entire facility and to facilities operated in connection therewith.

(11) In the case where the Federal financial assistance is in the form of or to aid in the acquisition of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipients, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits, or for as long as the recipient or transferee retains ownership or possession of the property, whichever is longer. In the case of any other type or form of assistance, the assurances shall be in effect for the duration of the period during which Federal financial assistance is extended to the program.

[38 FR 17938, July 5, 1973; 38 FR 23777, Sept. 4, 1973]

§ 8.6 Applicability of this part to Department assisted programs.

The following examples illustrate the applicability of this part to programs which receive or may receive Federal financial assistance administered by the Department. The fact that a particular program is not listed does not indicate that it is not covered by this part. The discrimination referred to is that described in § 8.4 against persons on the ground of race, color, or national origin.

(a) *Assistance to support economic development programs.* Discrimination in which recipients and other parties subject to this part shall not engage, directly or indirectly, includes discrimination in (1) the letting of contracts or other arrangements for the planning, designing, engineering, acquisition, construction, rehabilitation, conversion, enlargement, installation, occupancy, use, maintenance, leasing, subleasing, sales, or other utilization or disposition of property or facilities purchased or financed in whole or in part with the aid of Federal financial assistance; (2) the acquisition of goods or services, or the production, preparation, manufacture, marketing, transportation, or distribution of goods or services in connection with a program or its operations; (3) the onsite operation of the project or facilities; (4) services or accommodations offered to the public in connection with the program; and (5) in employment practices in connection with or which affect the program (as defined in § 8.4(c)); in the following programs:

(i) Any program receiving Federal financial assistance for the purchase or development of land and facilities (including machinery and equipment) for industrial or commercial usage.

(ii) Any program receiving Federal financial assistance in the form of loans or direct or supplementary grants for the acquisition or development of land and improvements for public works, public service or development facility usage, and the acquisition, construction, rehabilitation, alteration, expansion, or improvement of such facilities, including related machinery and equipment.

(iii) In any program receiving any form of technical assistance designed to alleviate or prevent conditions of excessive employment or underemployment.

(iv) In any program receiving Federal financial assistance in the form of administrative expense grants.

(b) *Assistance to support the training of students.* A current example of such assistance is that received by State maritime academies or colleges, by contract, of facilities (vessels), related equipment and funds to train merchant marine officers. In this and other student training programs, discrimination which is prohibited by recipients and other parties subject to this part includes discrimination in the selection of persons to be trained and in their treatment by the recipients in any aspect of the educational process and discipline during their training, or in the availability or use of any academic, housing, eating, recreational, or other facilities and services, or in financial assistance to students furnished or controlled by the recipients or incidental to the program. In any case where selection of trainees is made from a predetermined group, such as the students in an institution or area, the group must be selected without discrimination.

(c) *Assistance to support mobile or other trade fairs.* In programs in which operators of mobile trade fairs using U.S. flag vessels and aircraft and designed to exhibit and sell U.S. products abroad, or in which other trade fairs or exhibitions, receive technical and financial assistance, discrimination which is prohibited by recipients and other parties subject to this part includes discrimination in the selection or retention of any actual or potential exhibitors, or in access to or use of the services or accommodations by, or otherwise with respect to treatment of, exhibitors or their owners, officers, employees, or agents.

(d) *Assistance to support business entities eligible for trade adjustment assistance.* In programs in which eligible business entities receive any measure or kind of technical, financial or tax adjustment assistance because of or in connection with the impact of U.S. international trade upon such

business, discrimination which is prohibited by recipients and other parties subject to this part includes discrimination in their employment practices as defined in § 8.4(c).

(e) *Assistance to support research and development and related activities.* In programs in which individuals, educational or other institutions, public governmental or business entities receive Federal financial assistance in order to encourage or foster research or development activities as such, or to obtain, promote, develop, or protect thereby technical, scientific, environmental, or other information, products, facilities, resources, or services which are to be made available to or used by others; but where such programs do not constitute Government procurement of property or services, discrimination which is prohibited by recipients and other parties subject to this part includes discrimination with respect to (1) the choice, retention or treatment of contractors, subcontractors, subgrantees or of any other person; (2) the provision of services, facilities, or financial aid; (3) the participation of any party in the research activities; (4) the dissemination to or use by any person of the results or benefits of the research or development, whether in the form of information, products, services, facilities, resources, or otherwise. If research is performed within an educational institution under which it is expected that students or others will participate in the research as a part of their experience or training, on a compensated or uncompensated basis, there shall be no discrimination in admission of students to, or in their treatment by, that part of the school from which such students are drawn or in the selection otherwise of trainees or participants. The recipient educational institutions will be required to give the assurances provided in § 8.5(b)(10).

(f) *Assistance to aid in the operations of vessels engaged in U.S. foreign commerce.* In programs in which the operators of American-flag vessels used to furnish shipping services in the foreign commerce of the United States receive Federal financial assistance in the form of operating differential subsidies, discrimination which is

prohibited by recipients and other parties subject to this part includes discrimination in soliciting, accepting or serving in any way passengers or shippers of cargo entitled to protection in the United States under the Act.

Subpart B—General Compliance

§ 8.7 Cooperation, compliance reports and reviews and access to records.

(a) *Cooperation and assistance.* Each responsible Department official shall to the fullest extent practicable seek the cooperation of recipients and other parties subject to this part in obtaining compliance with this part and shall provide assistance and guidance to recipients and other parties to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient and other party subject to this part shall keep such records and submit to the responsible Department official timely, complete, and accurate compliance reports at such times and in such form and containing such information as the responsible Department official may determine to be necessary to enable him to ascertain whether the recipient or such other party has complied or is complying with this part. In general, recipients should have available for the department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, or under which a recipient is obligated to obtain or to cooperate in obtaining the compliance of other parties subject to this part, such other recipients or other parties shall also submit such compliance reports to the primary recipient or recipients as may be necessary to enable them to carry out their obligations under this part.

(c) *Access to sources of information.* Each recipient or other party subject to this part shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities, as may be pertinent to as-

certain compliance with this part. Where any information required of a recipient or other party is in the exclusive possession of another who fails or refuses to furnish this information, the recipient or other party shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient or other party subject to this part shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner as this part and the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

(e) *Compliance review.* The responsible Department official or his designee shall from time to time review the practices of recipients and other parties subject to this part to determine whether they are complying with this part.

§ 8.8 Complaints.

(a) *Filing complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official a written complaint. A complaint shall be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official.

§ 8.9 Intimidatory or retaliatory acts prohibited.

(a) No recipient or other party subject to this part shall intimidate, threaten, coerce, or discriminate against, any person for the purpose of interfering with any right or privilege secured by section 601 of the Act of this part, or because the person has made a complaint, testified, assisted, or participated in any manner in an in-

§ 8.10

vestigation, proceeding, or hearing under this part.

(b) The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial or other proceeding arising thereunder.

§ 8.10 Investigations.

(a) *Making the investigation.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation shall include, where appropriate, a review of the pertinent practices and policies of the recipient or other party subject to this part, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether there has been a failure to comply with this part.

(b) *Resolution of matters.* (1) If an investigation pursuant to paragraph (a) of this section indicates a failure to comply with this part, the responsible Department official will so inform the recipient or other party subject to this part and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 8.11.

(2) If an investigation does not warrant action pursuant to paragraph (b)(1) of this section, the responsible Department official will so inform the recipient or other party subject to this part and the complainant, if any, in writing.

§ 8.11 Procedures for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law.

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Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 8.5.* If a recipient or other party subject to this part fails or refuses to furnish an assurance required under § 8.5 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under said paragraph except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application or contract therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the recipient or other party subject to this part of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by such recipient or other party to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Secretary pursuant to § 8.13(e), and (4) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be

limited to the particular political entity, or part thereof, or other recipient or other party as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other party has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other party. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other party to comply with this part and to take such corrective action as may be appropriate.

§ 8.12 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 8.11(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected recipient or other party subject to this part. This notice shall advise the recipient or other party of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the recipient or other party may request of the responsible Department official that the matter be scheduled for hearing, or (2) advise the recipient or other party that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. A recipient or other party may waive a hearing and submit written information and argument for the record. The failure of a recipient or other party to request a

hearing under this paragraph of this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 8.11(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official or hearing officer unless he determines that the convenience of the recipient or other party or of the Department requires that another place be selected. Hearings shall be held before the responsible Department official, or at his discretion, before a hearing officer.

(c) *Right to counsel.* In all proceedings under this section, the recipient or other party and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedures Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the recipient or other party shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record

shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Secretary may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 8.13.

§ 8.13 Decisions and notices.

(a) *Decision by person other than the responsible Department official.* If the hearing is held by a hearing officer such hearing officer shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the recipient or other party subject to this part. Where the initial decision is made by the hearing officer, the recipient or other party may within 30 days of the mailing of such notice of initial decision file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion within 45 days after the initial decision serve on the recipient or other party a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review, the responsible Department official shall review the initial decision

and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official.

(b) *Decisions on record or review by the responsible Department official.* Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing officer pursuant to paragraph (a) of this section, or whenever the responsible Department official conducts the hearing, the recipient or other party shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the recipient or other party and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 8.12(a) a decision shall be made by the responsible departmental official on the record and a copy of such decision shall be given in writing to the recipient or other party, and to the complainant, if any.

(d) *Ruling required.* Each decision of a hearing officer or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the recipient or other party has failed to comply.

(e) *Approval by Secretary.* Any final decision of a responsible Department official (other than the Secretary) which provides for the suspension or termination of, or the refusal to grant or continue, Federal financial assistance, or the imposition of any other sanction available under this part of the Act, shall promptly be transmitted to the Secretary, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue, Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are

consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the recipient or other party determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this part.

(g) *Posttermination proceedings.* (1) Any recipient or other party which is adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any recipient or other party adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the recipient or other party has met the requirements of paragraph (g)(1) of this section. If the responsible Department official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Department official denies any such request, the recipient or other party may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with rules of procedure issued by the responsible Department official. The recipient or other party will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under

paragraph (f) of this section shall remain in effect.

§ 8.14 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 8.15 Effect on other laws; supplementary instructions; coordination.

(a) *Effect on other laws.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorizes the suspension or termination of or refusal to grant or to continue Federal financial assistance to any recipient or other party subject to this part of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any one of any obligations assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to January 9, 1965. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof):

(1) Executive Order 11246 and regulations issued thereunder, or

(2) Executive Order 11063 and regulations issued thereunder, or any other regulations or instructions, insofar as such order, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible Department official shall issue and promptly make available to interested parties forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in § 8.13), including the achievement of effective coordination and maximum uniformity within the Department and within the executive branch of the government in the application of title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the responsible official of this Department.

APPENDIX A—PROGRAMS COVERED BY TITLE VI

I. FEDERAL FINANCIAL ASSISTANCE TO WHICH TITLE 15, SUBTITLE A, PART 8 APPLIES

Economic Development Administration

1. Loans, grants, technical and other assistance for public works and development facilities, for supplementing Federal grants-in-aid, for private businesses, and for other purposes, including assistance in connection with designated economic development districts and regions (Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3121 et seq.).
2. Financial and technical assistance to firms to aid economic adjustment to the effects of increased imports in direct competition with firm products (Trade Act of 1974, 19 U.S.C. 2341-2354).
3. Assistance to communities adversely affected by increased imports in direct competition with products manufactured in the community area (Trade Act of 1974, 19 U.S.C. 2371-2374).
4. Assistance to projects involving construction of local and State public facilities in order to reduce unemployment and provide State and local governments with badly needed public facilities (Local Public Works Capital Development and Assistance Act of 1976, 42 U.S.C. 6701-6710).
5. Trade adjustment assistance: Loans, dissemination of technical information (title II

of the Trade Act of 1974, 19 U.S.C. 2341-2374).

Maritime Administration

1. Operating differential subsidy assistance to operators of U.S. flag vessels engaged in U.S. foreign commerce (46 U.S.C. 1171 et seq.).
2. Assistance to operate State maritime academies and colleges to train merchant marine officers (46 U.S.C. 1381-1388).
3. Ship construction differential subsidies, direct payments (Merchant Marine Act of 1936, as amended, 46 U.S.C. 1151-1161).

National Bureau of Standards

1. Grants to universities and other research organizations for fire research and safety programs (15 U.S.C. 278f).

National Fire Prevention and Control Administration

1. Academy planning assistance: To assist States in the development of training and education in the fire prevention and control area (15 U.S.C. 2201-2219).
2. State fire incident reporting assistance: To assist States in the establishment and operation of a statewide fire incident and casualty reporting system (15 U.S.C. 2201-2219).
3. Public education assistance planning: Publications, audiovisual presentations and demonstrations, research, testing, and experimentation to determine the most effective means for such public education (15 U.S.C. 2205c).
4. Policy development assistance: Studies of the operations and management aspects of fire services (15 U.S.C. 2207c).

National Oceanic and Atmospheric Administration

1. Assistance to States, educational institutions, and the commercial fishing industry for the development of tuna and other latent fisheries (16 U.S.C. 758e).
2. Assistance to States for the development and implementation of programs to protect and study certain species of marine mammals (16 U.S.C. 1379b).
3. Financial assistance to States with agencies which have entered into a cooperative agreement to assist in the preservation of threatened and endangered species (16 U.S.C. 1535).
4. Assistance to coastal States for the development of estuarine sanctuaries to serve as field laboratories and for acquiring access to public beaches (16 U.S.C. 1461).
5. Assistance to coastal States for the development, implementation, and administration of coastal zone management programs (16 U.S.C. 1454-1455).

6. Assistance to coastal States to help communities in dealing with the economic, social, and environmental consequences resulting from expanded coastal energy activity (16 U.S.C. 1456).

7. Authority to enter into cooperative agreements with "colleges and universities, with game and fish departments of the several States, and with nonprofit organizations relating to cooperative research units." Assistance limited to assignment of personnel, supplies, and incidental expenses (16 U.S.C. 753 a and b).

8. Grants for education and training of personnel in the field of commercial fishing, "to public and nonprofit private universities and colleges * * *" (16 U.S.C. 760d).

9. Grants for "office and any other necessary space" for the Northern Pacific Halibut Commission (16 U.S.C. 772).

10. The "Dingell Johnson Act": Apportionment of dollars to States for restoration and management of sport or recreational species (16 U.S.C. 777-777i; 777k).

11. Authority to cooperate with and provide assistance to States in controlling jellyfish, etc. (16 U.S.C. 1201, 1202).

12. Authority to cooperate with and provide assistance to certain States and territories in the study and control of "Crown of Thorns" starfish (16 U.S.C. 1211-1213).

13. Technical assistance to fishing cooperatives regarding catching and marketing aquatic products (15 U.S.C. 521-522).

14. Fish research and experimentation program cooperation with other agencies in acquisition of lands, construction of buildings, employment of personnel in establishing and maintaining research stations (16 U.S.C. 778a).

15. Assistance to upgrade commercial fishing vessels and gear (16 U.S.C. 742c).

16. Assistance to State projects designed for the research and development of commercial fisheries resources of the nation (16 U.S.C. 779a-779f).

17. Assistance to State and other non-Federal interests under cooperative agreements to conserve, develop, and enhance anadromous and Great Lakes Fisheries (16 U.S.C. 757a et seq.).

18. Grants and other assistance under the National Sea Grant College and Program Act of 1966: To support establishment of major university centers for marine research, education, training, and advisory services (33 U.S.C. 1121-1124).

19. Geodetic surveys and services; advisory services; dissemination of technical information (33 U.S.C. 883a).

20. Nautical charts assistance; advisory services; dissemination of technical information (33 U.S.C. 883a).

21. River and flood forecast and warning services; advisory services (15 U.S.C. 313).

22. Weather forecast and warning services (15 U.S.C. 311 and 313, 49 U.S.C. 1351 and 1463).

23. Commercial fisheries disaster assistance (16 U.S.C. 779b).

24. Provision for the Weather Service to assist in joint projects "of mutual interest" (15 U.S.C. 1525).

National Telecommunications and Information Administration

1. Grants for the planning and construction of public telecommunications facilities for the production and distribution of non-commercial educational and cultural radio and television programming and related instructional and informational materials. (Public Telecommunications Financing Act of 1978, 47 U.S.C. Sections 390-394).

Office of Minority Business Enterprise

1. Assistance to minority business enterprises: Grants, contracts, advisory service, technical information (15 U.S.C. 1512; title III of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151; Executive Order 11625, Oct. 13, 1971).

Regional Action Planning Commissions

1. Supplemental grants to Federal grant-in-aid programs and technical assistance funds for planning, investigations, studies, training programs, and demonstration projects, including demonstrations in energy, transportation, health and nutrition, education and indigenous arts and crafts (title V of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3181-3196).

United States Travel Service

1. Assistance to strengthen the domestic and foreign commerce of the United States, and to promote friendly understanding and appreciation of the United States by encouraging foreign residents to visit the United States (22 U.S.C. 2121 et seq.).

Departmentwide

1. Authority to make basis scientific research grants (42 U.S.C. 1891-1893; to be superseded no later than Feb. 3, 1979, by the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224).

II. A PRIMARY OBJECTIVE OF THE FINANCIAL ASSISTANCE AUTHORIZED BY THE FOLLOWING STATUTES, ALREADY LISTED ABOVE IN APPENDIX A1, IS TO PROVIDE EMPLOYMENT

1. Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 et seq.).

2. Trade Act of 1974 (19 U.S.C. 2341-2354).

3. Local Public Works Capital Development and Assistance Act of 1976 (42 U.S.C. 6701-6710)

[43 FR 49303, Oct. 23, 1978, as amended at 44 FR 12642, Mar. 8, 1979]

PART 8a—AUDIT REQUIREMENTS FOR STATE AND LOCAL GOVERNMENTS

Sec.

- 8a.1 Purpose.
- 8a.2 Background.
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- 8a.11 Illegal acts or irregularities.
- 8a.12 Audit reports.
- 8a.13 Audit resolution.
- 8a.14 Audit workpapers and reports.
- 8a.15 Audit costs.
- 8a.16 Sanctions.
- 8a.17 Auditor selection.
- 8a.18 Small and minority audit firms.

AUTHORITY: Single Audit Act of 1984, Pub. L. 98-502, (31 U.S.C. 7501, *et seq.*); OMB Circular A-128, Audits of State and Local Governments.

SOURCE: 50 FR 30419, July 26, 1985, unless otherwise noted.

§ 8a.1 Purpose.

Pursuant to the Single Audit Act of 1984, Pub. L. 98-502, this part established audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

§ 8a.2 Background.

The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State and local governments that receive \$100,000 or more a year in Federal funds to have an audit made for that year.

§ 8a.3 Policy.

The Single Audit Act requires the following:

(a) State or local governments that receive \$100,000 or more a year in Federal financial assistance shall have an

audit made in accordance with this rule.

(b) State or local governments that receive between \$25,000 and \$100,000 a year shall have an audit made in accordance with this part, or in accordance with Federal laws and regulations governing the programs they participate in.

(c) State or local governments that receive less than \$25,000 a year shall be exempt from compliance with the Act and Federal audit requirements. These State or local governments shall be governed by audit requirements prescribed by State or local law or regulation.

(d) Nothing in this paragraph exempts State or local governments from maintaining records of financial assistance or from providing access to such records to Federal agencies, as provided in Federal law or in Circular A-102, "Uniform requirements for grants to State of local governments."

§ 8a.4 Definitions.

For the purpose of this part, the following definitions from the Single Audit Act apply:

(a) "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 8a.10 of this rule.

(b) "Federal financial assistance" means assistance provided by the Department in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from the Department, or directly through other units of State or local governments.

(c) "Federal agency" has the same meaning as the term 'agency' in Section 551(1) of Title 5, United States Code.

(d) "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

(e) "Generally accepted government auditing standards" means the "Standards For Audit of Government

Organizations, Programs, Activities, and Functions, developed by the Comptroller General, dated February 27, 1981.

(f) "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

(g) "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

(h) "Indian Tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(i) "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of government, and any other instrumentality of local government.

(j) "Major Federal Assistance Program," for State or local governments having Federal assistance expenditures between \$100,000 and \$100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of \$300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed \$100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
\$100 million.....	\$1 billion.....	\$3 million.
\$1 billion.....	\$2 billion.....	\$4 million.
\$2 billion.....	\$3 billion.....	\$7 million.
\$3 billion.....	\$4 billion.....	\$10 million.
\$4 billion.....	\$5 billion.....	\$13 million.
\$5 billion.....	\$6 billion.....	\$16 million.
\$6 billion.....	\$7 billion.....	\$19 million.
Over \$7 billion.....		\$20 million.

(k) "Public accountants" means those individuals who meet the qualifications standards included in generally accepted government auditing standards for personnel performing government audits.

(l) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any instrumentality thereof, and any multi-State, regional or interstate entity that has governmental functions and any Indian Tribe.

(m) "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

§ 8a.5 Scope of audit.

The Single Audit Act provides that:

(a) The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives \$25,000 or more in General Revenue Sharing Funds in a

fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

(c) Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this part. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of OMB Circular A-110, "Uniform requirements for grants to universities, hospitals, and other non-profit organizations."

(d) The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

§ 8a.6 Frequency of audit.

Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

§ 8a.7 Internal control and compliance reviews.

The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is

managing Federal assistance programs in compliance with applicable laws and regulations.

(a) *Internal control review.* In order to provide this assurance, the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

(b) *Compliance review.* The Law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of

adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(i) In making the test of transactions, the auditor shall determine whether:

(A) the amounts reported as expenditures were for allowable services, and

(B) the records show that those who received services or benefits were eligible to receive them.

(ii) In addition to transaction testing, the auditor shall determine whether:

(A) matching requirements, levels of effort and earmarking limitations were met,

(B) Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

(C) amounts claimed or used for matching were determined in accordance with OMB Circular A-87, "Cost principles for State and local governments," and Attachment F of OMB Circular A-102, "Uniform requirements for grants to State or local governments."

(iii) The principle compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

§ 8a.8 Subrecipients.

State or local governments that receive Federal financial assistance and provide \$25,000 or more of it in a fiscal year to a subrecipient shall:

(a) Determine whether State or local subrecipients have met the audit requirements of this part and whether subrecipients covered by Circular A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that requirement;

(b) Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this part, OMB Circular A-110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

(c) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

(d) Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

(e) Require each subrecipient to permit independent auditors to have access to the records and financial statement as necessary to comply with this part.

§ 8a.9 Relation to other audit requirements.

The Single Audit Act provides that an audit made in accordance with this part shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides the Department with information and assurance it needs to carry out its overall responsibilities, the Department shall rely upon and use such information. However, the Department shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulations. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

(a) The provisions of this part do not limit the authority of the Department to make, or contract for audits and evaluations of Federal financial assistance programs, nor does it limit the

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authority of the Inspector General or other Federal audit officials.

(b) The provisions of this part do not authorize any State or local government or subrecipient thereof to constrain the Department, in any manner, from carrying out additional audits.

(c) The Department, when making or contracting for audits in addition to the audits made by recipients pursuant to this part shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

§ 8a.10 Cognizant agency responsibilities.

The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this part.

(a) The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency in order to fulfill the cognizant responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

(b) A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this rule.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

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(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this part. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies of repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this rule, so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

§ 8a.11 Illegal acts or irregularities.

If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also § 8a.12(a)(3) for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

§ 8a.12 Audit reports.

Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

(a) The audit report shall state that the audit was made in accordance with the provisions of this part. The reports shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance pro-

gram as identified in the *Catalog of Federal Domestic Assistance*. Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weakness identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

(i) A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

(ii) Negative assurance on those items not tested;

(iii) A summary of all instances of noncompliance; and

(iv) An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

(b) The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

(c) All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with § 8a.12(f).

(d) In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

(e) The reports shall be made available by the State or local government

for public inspection within 30 days after the completion of the audit.

(f) In accordance with generally accepted government audit standards, report shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the end of the audit period unless a longer period is agreed to with the cognizant agency.

(g) Recipients of more than \$100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and followup with State or local governments that have not submitted required audit reports.

(h) Recipients shall keep audit reports on file for three years from the date of their issuance.

§ 8a.13 Audit resolution.

(a) As provided in § 8a.10, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

(b) Resolution shall be made within six months after receipt of the report by Federal departments and agencies. Corrective action should proceed as rapidly as possible.

§ 8a.14 Audit workpapers and reports.

Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit work-

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papers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

§ 8a.15 Audit costs.

The cost of audits made in accordance with the provisions of this part are allowable charges to Federal assistance programs.

(a) The charges may be considered a direct cost of an allocated indirect cost, determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State and local governments."

(b) Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

§ 8a.16 Sanctions.

The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this part. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

(a) Withholding a percentage of assistance payments until the audit is completed satisfactorily.

(b) Withholding or disallowing overhead costs, and

(c) Suspending the Federal assistance agreement until the audit is made.

§ 8a.17 Auditor selection.

In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of OMB Circular A-102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to pur-

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chase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

§ 8a.18 Small and minority audit firms.

Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this part. Recipients of Federal assistance shall take the following steps to further this goal:

(a) Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

(b) Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

(c) Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

(d) Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

(e) Encourage contracting with consortiums of small audit firms as described in paragraph (a) of this section when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

(f) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned

and controlled by socially and economically disadvantaged individuals.

PART 8b—PROHIBITION OF DISCRIMINATION AGAINST THE HANDICAPPED IN FEDERALLY ASSISTED PROGRAMS OPERATED BY THE DEPARTMENT OF COMMERCE

Subpart A—General Provisions

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- 8b.20 Admissions and recruitment.
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Subpart E—Procedures

- 8b.26 Procedures.

AUTHORITY: Sec. 504, Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

SOURCE: 47 FR 17746, Apr. 23, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 8b.1 Purpose.

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of handicap in any program or activity receiving or benefiting from Federal financial assistance. The purpose of this part is to implement section 504 with respect to programs and activities receiving or benefiting from Federal financial assistance from the Department of Commerce.

§ 8b.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Commerce and to each program receiving or benefiting from such assistance. The requirements of this part do not apply to the ultimate beneficiaries of Federal financial assistance in the program receiving Federal financial assistance.

§ 8b.3 Definitions.

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, and by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95-602 (codified at 29 U.S.C. 794 (1976 & Supp. II 1978)).

(b) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(c) "Department" means the Department of Commerce and any of its constituent units authorized to provide Federal financial assistance.

(d) "Facility" means all or any portion of buildings, ships, structures, equipment, roads, walks, parking lots, industrial parks, or other real or personal property or interest in such property.

(e) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guarantee), or any other arrangement by which the

Department provides or otherwise makes available assistance in the form of:

- (1) Funds;
- (2) Services of Federal personnel; or
- (3) Real and personal property or any interest in or use of such property, including:

- (i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

- (ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(f) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (g) of this section.

(g) "Handicapped person."

(1) "Handicapped person" means any person who:

- (i) Has a physical or mental impairment which substantially limits one or more major life activities;

- (ii) Has a record of such an impairment; or

- (iii) Is regarded as having such an impairment.

(2) For purposes of employment, the term "handicapped person" does not include any person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents that individual from performing the duties of the job in question, or whose employment, because of current alcohol or drug abuse, would constitute a direct threat to property or to the safety of others.

(3) As used in paragraph (g)(1) of this section, the phrase:

(i) "Physical or mental impairment" means:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(B) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(C) The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, and receiving education or vocational training.

(iii) "Has a record of such an impairment" means that the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means that the individual:

- (A) Has a physical or mental impairment that does not substantially limit major life activities, but that is treated by a recipient as constituting such a limitation;

- (B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

- (C) Has none of the impairments defined in paragraph (g)(3)(i) of this section, but is treated by a recipient as having such an impairment.

(h) "Qualified handicapped person" means:

- (1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

- (2) With respect to post secondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

- (3) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(i) "Recipient" means any State or its political subdivisions, any instrumentality of a State or its political subdivisions, any public or private

agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or indirectly through another recipient, or including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(j) "Secretary" means the Secretary of Commerce, U.S. Department of Commerce.

(k) "Section 504" means Section 504 of the Act.

(l) "Small recipient" means a recipient who serves fewer than 15 beneficiaries and who employs fewer than 15 employees at all times during a grant year.

§ 8b.4 Discrimination prohibited.

(a) *General.* No qualified handicapped individual shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped individual the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped individual an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped individual with any aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped individuals or to any class of handicapped individuals, unless such action is necessary to provide qualified handicapped individuals with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped individual by providing significant assistance to an agency, organization, or

person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped individual the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefits, or services.

(2) For purposes of this part, aid, benefits, and services must afford handicapped individuals an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as afforded to others, in the most integrated setting appropriate to the individual's needs. However, aid, benefits and services, to be equally effective, need not produce the identical result or level of achievement for handicapped and non-handicapped individuals.

(3) A recipient may not deny a qualified handicapped individual the opportunity to participate in its regular programs or activities, despite the existence of separate or different programs or activities which are established in accordance with this part.

(4) A recipient may not, directly or through contractual or other arrangements, use criteria or methods of administration:

(i) That have the effect of subjecting qualified handicapped individuals to discrimination on the basis of handicap;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped individuals; or

(iii) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(5) In determining the geographic site or location of a facility, an applicant for assistance or a recipient may not make selections:

(i) That have the effect of excluding handicapped individuals from, denying them the benefit of, or otherwise subjecting them to discrimination under

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any program or activity that receives or benefits from Federal financial assistance; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped individuals.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased, rented or otherwise acquired, in whole or in part, with Federal financial assistance.

(7)(i) In providing services under programs of Federal financial assistance, recipients to which this subpart applies, except small recipients, shall ensure that no handicapped participant is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the program or activity operated by the recipient because of the absence of auxiliary aids for participants with impaired sensory, manual or speaking skills. A recipient shall operate each program or activity to which this subpart applies so that, when viewed in its entirety, auxiliary aids are readily available. The Secretary may require small recipients to provide auxiliary aids in order to ensure that no handicapped participant is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the program or activity operated by small recipients, when this would not significantly impair the ability of the small recipient to provide benefits or services.

(ii) Auxiliary aids may include brailled and taped materials, interpreters, telecommunications devices, or other equally effective methods of making orally delivered information available to persons with hearing impairments, readers for persons with visual impairments, equipment adapted for use by persons with manual impairments, and other similar devices and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal

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use or study, or other devices or services of a personal nature.

(c) *Programs limited by Federal Law.* The exclusion of non-handicapped persons from the benefits of a program limited by Federal statute or Executive Order to handicapped individuals, or the exclusion of a specific class of handicapped individuals from a program limited by Federal statute or Executive Order to a different class of handicapped individuals is not prohibited by this part.

(d) *Integrated Setting.* Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped individuals.

(e) *Communications with individuals with impaired vision and hearing.* Recipients shall ensure that communications with their applicants, employees and beneficiaries are available to persons with impaired vision or hearing. Appropriate modes of communication may include braille, enlarged type, sign language and telecommunications devices.

§ 8b.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Secretary, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits.

(2) In case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during

which it retains ownership or possession of the property.

(3) In all other cases, the assurance will obligate the recipient for the period during which Federal financial assistance is extended or the federally-funded program is operated, whichever is longer.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure non-discrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer or property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (c)(1) of this section in the instrument effecting or recording any subsequent transferee of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposed to mortgage or otherwise encumber the real property as security to finance construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Secretary may agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective. Such an agreement by the Secretary may be entered into only upon the request of the transferee (recipient) if it is necessary to accomplish such financing and upon such terms and conditions as the Secretary deems appropriate.

(d) *Interagency agreements.* Where funds are granted by the Department to another Federal agency to carry out a program under a law administered

by the Department, and where the grant obligates the recipient agency to comply with the rules and regulations of the Department applicable to that grant the provisions of this part shall apply to programs and activities operated with such funds.

§ 8b.6 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action:

(i) With respect to handicapped individuals who would have been participants in the program had the discrimination not occurred; and

(ii) With respect to handicapped persons who are no longer participants in the recipient's program, but who were participants in the program when the discrimination occurred; and

(iii) with respect to employees and applicants for employment.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped individuals.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped individuals or organizations representing handicapped individuals, its current policies and practices and

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the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped individuals or organizations representing handicapped individuals, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped individuals or organizations representing handicapped individuals, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient, other than a small recipient, shall for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Secretary upon request:

(i) A list of the interested persons consulted;

(ii) A description of areas examined and any problems identified; and

(iii) A description of any modifications made and of any remedial steps taken.

(3) The Secretary may, as he or she deems necessary, direct recipients to conduct additional self-evaluations, in accordance with the requirements of paragraph (c)(1) of this section.

(Approved by the Office of Management and Budget under control number 0605-0006)

[47 FR 17746, Apr. 23, 1982, as amended at 47 FR 35472, Aug. 16, 1982]

§ 8b.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient, other than a small recipient, shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient, other than a small recipient, shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such

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procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to post secondary educational institutions.

§ 8b.8 Notice.

(a) A recipient, other than a small recipient, shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of handicap in violation of Section 504 and of this part. The notification shall state, where appropriate, that the recipient does not discriminate in the admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 8b.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publications in newspapers and magazines, placement of notices in recipient's publications, and distribution of memoranda or other written communication. A recipient shall take appropriate steps to ensure that notice is available to persons with impaired vision or hearing.

(b) If a recipient publishes or uses recruitment materials or publications containing general information made available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications, or by revising and reprinting the materials and publications.

§ 8b.9 Administrative requirements for small recipients.

The Secretary may require small recipients to comply with §§ 8b.7 and 8b.8, in whole or in part, when the Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the small recipient to provide benefits or services.

§ 8b.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped individuals to receive services, participate in programs, or practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped individuals than for nonhandicapped persons.

Subpart B—Employment Practices**§ 8b.11 Discrimination prohibited.**

(a) *General.* (1) No qualified handicapped individual shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from Federal financial assistance.

(2) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(3) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include

relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities.* The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising and the processing of applicants for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation; pension or other benefit the applicant or employee receives from any other source.

§ 8b.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

(1) Making the facilities used by the employees in the area where the program is conducted, including common areas used by all employees such as hallways, restrooms, cafeterias and lounges, readily accessible to and usable by handicapped persons; and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number of participants, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(e) Nothing in this paragraph shall relieve a recipient of its obligation to make its program accessible as required in Subpart C of this part, or to provide auxiliary aids, as required by § 8b.4(b)(7).

§ 8b.13 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped individuals or any class of handicapped individuals unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question; and

(2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped individuals are not shown by the Secretary to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately to reflect the applicant's or employee's job skills aptitude, or whatever factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 8b.14 Preemployment inquires.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct preemployment inquiry of an applicant for employment as to whether the applicant is a handicapped individual, or as to the nature

or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 8b.6(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in this federally assisted program or activity pursuant to § 8b.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, *Provided, That:*

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally, if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, *Provided, That:*

(1) All employees are subject to such an examination regardless of handicap, and

(2) The results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except:

(1) Employing officials may obtain the information after making a conditional decision to make a job offer to the applicant or the applicant was

placed conditionally in a job pool or placed conditionally on an eligibility list;

(2) Supervisors and managers may be informed regarding restrictions on the work or duties of qualified handicapped individuals and regarding necessary accommodations;

(3) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(4) Government officials investigating compliance with the Act shall be provided information upon request.

§ 8b.15 Employment on ships.

No qualified handicapped individual possessing an appropriate license or certificate obtained from the United States Coast Guard pursuant to the requirements of 46 CFR 10.01-1 et seq. and 12.0-1 et seq. shall, on the basis of handicap, be subjected to discrimination in employment on ships under any program or activity to which this part applies.

Subpart C—Program Accessibility

§ 8b.16 Discrimination prohibited.

No qualified handicapped individual shall, because a recipient's facilities are inaccessible to or unusable by handicapped individuals, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 8b.17 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to qualified handicapped individuals. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by qualified handicapped individuals. However, if a particular program is available in only one location, that site must be made accessible or the program must be made available at an alternative accessible site or sites. Program accessibility requires nonpersonal aids to make the

program accessible to mobility impaired persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirement of § 8b.19, or any other method that results in making its program or activity accessible to handicapped individuals. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped individuals in the most integrated setting appropriate.

(c) If a small recipient finds, after consultation with a qualified handicapped individual seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities or facility, the small recipient may, as an alternative, refer the qualified handicapped individual to other providers of those services that are accessible at no additional cost to the handicapped.

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within 60 days of the effective date of this part. Where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested per-

sons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to qualified handicapped individuals;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify the steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities and facilities that are accessible to and usable by qualified handicapped individuals.

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[47 FR 17746, Apr. 23, 1982, as amended at 47 FR 35472, Aug. 16, 1982]

§ 8b.18 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by qualified handicapped individuals, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by qualified handicapped individuals.

(c) *Standards for architectural accessibility.* Design, construction, or alteration of facilities under this subpart shall meet the most current standards for physical accessibility prescribed by the General Services Administration under the Architectural Barriers Act, at 41 CFR 101-19.603. Alternative standards may be adopted when it is clearly evident that equivalent or greater access to the facility or part of the facility is thereby provided.

Subpart D—Post Secondary Education

§ 8b.19 Application of this subpart.

Subpart D applies to post secondary education programs and activities, including post secondary vocational education programs and activities, that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 8b.20 Admission and recruitment.

(a) *General.* Qualified handicapped may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped individuals who may be admitted; and

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped individuals or any class of handicapped individuals unless:

(i) The test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question; and

(ii) Alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Secretary to be available.

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the ap-

plicant's aptitude or achievement level of whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped individuals; and

(4) Except as provided in paragraph (c) of this section, may not make pre-admission inquiry as to whether an applicant for admission is a handicapped individual but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Pre-admission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 8b.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 8b.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, *Provided, That:*

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally, if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in

question in order to monitor the general validity of the test scores.

§ 8b.21 Treatment of students.

(a) *General.* No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other post secondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, education programs or activities operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap exclude any qualified handicapped student from any course or study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

§ 8b.22 Academic adjustments.

(a) *Academic requirements.* A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of

degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) *Other rules.* A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its course examinations or other procedures for evaluating student's academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills. A recipient shall operate each program or activity to which this subpart applies so that, when viewed in its entirety, auxiliary aids are readily available.

(2) Auxiliary aids may include taped text, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 8b.23 Housing provided by the recipient.

(a) A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of transition period provided for in Subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) *Other Housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 8b.24 Financial and employment assistance to students.

(a) *Provision of financial assistance.* (1) In providing financial assistance to qualified handicapped individuals, a recipient to which this subpart applies may not (i) on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or (ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped individuals on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trust, bequest, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall

assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate Subpart B if they were provided by the recipient.

(c) *Employment of student by recipients.* A recipient that employs any of its students may not do so in a manner that violates Subpart B.

§ 8b.25 Nonacademic services.

(a) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation of differentiation is consistent with the requirements of § 8b.22(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are non-handicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organi-

zations do not permit discrimination otherwise prohibited by this subpart.

Subpart E—Procedures

§ 8b.26 Procedures.

The enforcement provisions applicable to Title VI of the Civil Rights Act of 1964 found at §§ 8.7-8.15 of this sub-title shall apply to this part.

PART 9—PROCEDURES FOR A VOLUNTARY LABELING PROGRAM FOR HOUSEHOLD APPLIANCES AND EQUIPMENT TO EFFECT ENERGY CONSERVATION

Sec.

- 9.0 Purpose.
- 9.1 Goal of program.
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- 9.3 Appliances and equipment included in program.
- 9.4 Development of voluntary energy conservation specifications.
- 9.5 Participation of manufacturers.
- 9.6 Termination of participation.
- 9.7 Department of Commerce energy conservation mark.
- 9.8 Amendment or revision of voluntary energy conservation specifications.
- 9.9 Consumer education.
- 9.10 Coordination with State and local programs.
- 9.11 Annual report.

AUTHORITY: Sec. 2, 31 Stat. 1449, as amended, sec. 1, 64 Stat. 371; 15 U.S.C. 272; Reorganization Plan No. 3 of 1946, Part VI; Message from the President of the United States Concerning Energy Resources, April 18, 1973 (119 Cong. Rec. H2886).

SOURCE: 38 FR 29574, Oct. 26, 1973, unless otherwise noted.

§ 9.0 Purpose.

The purpose of this part is to establish procedures relating to the Department's voluntary labeling program for household appliances and equipment to promote and effect energy conservation.

§ 9.1 Goal of program.

(a) This program was initiated in response to the direction of President Nixon in his 1973 Energy Message that the Department of Commerce in cooperation with the Council on Environmental Quality and the Environ-

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mental Protection Agency develop a voluntary labeling program which would apply to energy-consuming home appliances.

(b) The goal of this program is to encourage manufacturers to provide consumers, at the point of sale, with information on the energy consumption and energy efficiency of household appliances and equipment. Such information, presented in a uniform manner readily understandable to consumers, would be displayed on Labels attached to or otherwise provided with the appliances or equipment. The Labels will include a system intended to make it possible for consumers to compare by cost or otherwise the energy consumption and energy efficiency characteristics when purchasing household appliances and equipment and to select those that can effect savings in energy consumption.

§ 9.2 Definitions.

(a) The term "Secretary" means the Secretary of Commerce.

(b) The term "manufacturer" means any person engaged in the manufacturing or assembling of new appliances or equipment in the United States, or in the importing of such products for sale or resale, or any person whose brand or trademark appears on such products who owns such brand or trademark and has authorized its use on such products, if the brand or trademark of the person actually manufacturing or assembling the products does not appear on the products.

(c) The term "energy consumption" means the energy resources used by appliances or equipment under conditions of use approximating actual operating conditions insofar as practical as determined through test procedures contained or identified in a final Voluntary Energy Conservation Specification published under § 9.4(e).

(d) The term "energy efficiency" means the energy use of appliances or equipment relative to their output of services, as determined through test procedures contained or identified in a final Voluntary Energy Conservation Specification published under § 9.4(e).

(e) The term "consumer" means the first person who purchases a new ap-

pliance or item of equipment for purposes other than resale.

(f) The term "class of appliance or equipment" means a group of appliances or equipment whose functions or features are similar, and whose functional output covers a range that may be of interest to consumers.

(g) The term "Specification" means a Voluntary Energy Conservation Specification developed under § 9.4.

(h) The term "Label" means printed matter affixed to or otherwise provided with appliances or equipment and meeting all the requirements called for in a Voluntary Energy Conservation Specification published under § 9.4(e).

[38 FR 29574, Oct. 26, 1973, as amended at 40 FR 33966, Aug. 13, 1975]

§ 9.3 Appliances and equipment included in program.

The appliances and equipment included in this program are room and central air conditioners, household refrigerators, home freezers, clothes washers, dishwashers, clothes dryers, kitchen ranges and ovens, water heaters, comfort heating equipment, and television receivers. Additional appliances and equipment may be included in the program by the Secretary pursuant to rule making procedures as set out in 5 U.S.C. 553. Individual units of appliances and equipment manufactured for export are not included in this program.

[38 FR 29574, Oct. 26, 1973, as amended at 40 FR 33966, Aug. 13, 1975]

§ 9.4 Development of voluntary energy conservation specifications.

(a) The Secretary in cooperation with appropriate Federal agencies and in cooperation with affected manufacturers, distributors, retailers, consumers, environmentalists, and other interested parties shall develop proposed Specifications for the specific classes of appliances and equipment covered under § 9.3.

(b) Each Specification shall as a minimum include:

(1) A description of the class of appliance or equipment covered by the Specification, listing the distribution

of energy efficiencies for that class of appliance or equipment.

(2) Listings or descriptions of test methods to be used in measuring the energy consumption and/or energy efficiency characteristics of the class of appliance or equipment.

(3) A prototype Label and directions for displaying the Label on or with appliances or equipment of that class. The Label shall be prominent, readable, and visible and shall include information that will assist the consumer in comparing by cost or otherwise the energy consumption and/or energy efficiency characteristics of a particular appliance or item of equipment with all others in its class. The Label shall also include the Department of Commerce Energy Conservation Mark specified in § 9.7.

(4) Conditions for the participation of manufacturers in the program.

(c) The test methods listed or described in the Specification pursuant to § 9.4(b)(2) shall be those described in existing nationally-recognized voluntary standards where such methods are appropriate. Where appropriate test methods do not so exist, they will be developed by the Department of Commerce in cooperation with interested parties.

(d) The Secretary upon development of a proposed Specification shall publish in the FEDERAL REGISTER a notice giving the complete text of the proposed Specification, and any other pertinent information, and inviting any interested person to submit written comments on the proposed Specification within 30 days after its publication in the FEDERAL REGISTER, unless another time limit is provided by the Secretary. Interested persons wanting to express their views in an informal hearing may do so if, within 15 days after the proposed Specification is published in the FEDERAL REGISTER, they request the Secretary to hold a hearing. Such informal hearings shall be held so as to give all interested persons opportunity for the oral presentation of data, views, or arguments in addition to the opportunity to make written submissions. Notice of such hearings shall be published in the FEDERAL REGISTER. A transcript shall be kept of any oral presentations.

(e) The Secretary, after consideration of all written and oral comments and other materials received in accordance with paragraph (d) of this section, shall publish in the FEDERAL REGISTER within 30 days after the final date for receipt of comments, or as soon as practicable thereafter, a notice either:

(1) Giving the complete text of a final Specification, including conditions of use, and stating that any manufacturer of appliances or equipment in the class concerned desiring voluntarily to use the Label and Energy Conservation Mark with such appliances or equipment must advise the Department of Commerce; or

(2) Stating that the proposed Specification will be further developed before final publication; or

(3) Withdrawing the proposed Specification from further consideration.

§ 9.5 Participation of manufacturers.

(a) Manufacturers desiring to participate in this program will so notify the Department of Commerce. The notification will identify the particular Specification to be used and the manufacturer's model numbers for the products to be labeled. The notification will also state that the manufacturer will abide by all conditions contained in the Specification and will desist from using the Label and Energy Conservation Mark if requested by the Department of Commerce under the provisions of § 9.6.

(b) The conditions for participation will be set out in the Specification and will include, but not be limited to, the following:

(1) Prior to the use of a Label the manufacturer will make or have made the measurements to obtain the information required for inclusion on the Label and, if requested, will forward within 30 days such measurement data to the Department of Commerce. Such measurement data will be kept on file by the manufacturer or his agent for two years after that model of appliance or equipment is no longer manufactured unless otherwise provided in the Specification. The use of independent test laboratories or national certification programs available to any

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manufacturer is acceptable for the purposes of this program.

(2) The manufacturer will describe the test results on the Label as prescribed in the Specification.

(3) The manufacturer will display or arrange to display, in accordance with the appropriate Specification, the Label on or with each individual unit of appliance or equipment within the subject class and with the same brand name manufactured by him except for units exported from the United States. All models with the same brand name that fall within the class must be included in the program unless they are for export only.

(4) The manufacturer agrees at his expense to comply with any reasonable request of the Department of Commerce to have appliances or equipment manufactured by him tested to determine that testing has been done according to the relevant Specification.

(5) Manufacturers may reproduce the Department of Commerce Labels and Energy Conservation Mark in advertising provided that the entire Label, complete with all information required to be displayed at the point of retail sale, is shown legibly.

§ 9.6 Termination of participation.

(a) The Department of Commerce upon finding that a manufacturer is not complying with the conditions of participation set out in these procedures or in a Specification may terminate upon 30 days notice the manufacturer's participation in the program: *Provided*, That the manufacturer shall first be given an opportunity to show cause why the participation should not be terminated. Upon receipt of a notice of termination, a manufacturer may request within 30 days a hearing under the provisions of 5 U.S.C. 558.

(b) A manufacturer may at any time terminate his participation and responsibilities under this program with regard to a specific class of products by giving written notice to the Secretary that he has discontinued use of the Label and Energy Conservation Mark for all appliances or equipment within that class.

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§ 9.7 Department of Commerce energy conservation mark.

The Department of Commerce shall develop an Energy Conservation Mark which shall be registered in the U.S. Patent Office under 15 U.S.C. 1054 for use on each Label described in a Specification.

§ 9.8 Amendment or revision of voluntary energy conservation specifications.

The Secretary may by order amend or revise any Specification published under § 9.4. The procedure applicable to the establishment of a Specification under § 9.4 shall be followed in amending or revising such Specification. Such amendment or revision shall not apply to appliances or equipment manufactured prior to the effective date of the amendment or revision.

§ 9.9 Consumer education.

The Department of Commerce, in close cooperation and coordination with interested Government agencies, appropriate industry trade associations and industry members, and interested consumers and environmentalists shall carry out a program to educate consumers relative to the significance of the labeling program. Some elements of this program shall also be directed toward informing retailers and other interested groups about the program.

§ 9.10 Coordination with State and local programs.

The Department of Commerce will establish and maintain an active program of communication with appropriate state and local government offices and agencies and will furnish and make available information and assistance that will promote to the greatest practicable extent uniformity in State, local, and Federal programs for the labeling of household appliances and equipment to effect energy conservation.

§ 9.11 Annual report.

The Secretary will prepare an annual report of activities under the program, including an evaluation of the program and a list of participating

manufacturers and classes of appliances and equipment.

PART 10—PROCEDURES FOR THE DEVELOPMENT OF VOLUNTARY PRODUCT STANDARDS

Sec.

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§ 10.0 General.

(a) *Introduction.* The Department of Commerce (hereinafter referred to as the "Department") recognizes the importance, the advantages, and the benefits of voluntary standards and standardization activities. Such standards may cover, but are not limited to, terms, classes, sizes (including quantities of packaged consumer commodities), dimensions, capacities, quality levels, performance criteria, inspection requirements, marking requirements, testing equipment, test procedures, and installation procedures. Economic growth is promoted through:

(1) Reduction of manufacturing costs, inventory costs, and distribution costs;

(2) Better understanding among manufacturers, producers, or packagers (hereinafter referred to as producers), distributors, users, and consumers; and

(3) Simplification of the purchase, installation, and use of the product being standardized.

(b) *Requirements for Department of Commerce sponsorship.* The Department may sponsor the development of a Voluntary Product Standard if, upon receipt of a request, the Department determines that:

(1) The proposed standard is likely to have substantial public impact;

(2) The proposed standard reflects the broad interest of an industry group or an organization concerned with the manufacture, production, packaging, distribution, testing, consumption, or use of the product, or the interest of a Federal or State agency;

(3) The proposed standard would not duplicate a standard published by, or actively being developed or revised by, a private standards-writing organization to such an extent that it would contain similar requirements and test methods for identical types of products, unless such duplication was deemed by the Department to be in the public interest; Private standards-writing organizations shall be defined as voluntary standards bodies listed by the Secretary of Commerce under the responsibilities described in section 7.a.(2) of the Office of Management and Budget Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards;"

(4) Lack of government sponsorship would result in significant public disadvantage for legal reasons or reasons of domestic and international trade;

(5) The proposed standard is not appropriate for development and maintenance by a private standards-writing organization; and

(6) The proposed standard will be funded by a proponent organization or government agency to cover costs for administrative and technical support services provided by the Department.

(c) *Role of the Department.* The Department assists in the establishment of a Voluntary Product Standard as follows:

(1) Acts as an unbiased coordinator in the development of the standard;

(2) Provides editorial assistance in the preparation of the standard;

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(3) Supplies such assistance and review as is required to assure the technical soundness of the standard;

(4) Seeks satisfactory adjustment of valid points of disagreement;

(5) Determines the compliance with the criteria established in these procedures for such voluntary standards;

(6) Provides secretarial functions for each committee appointed by the Department under these procedures;

(7) Publishes the standard as a public document;

(8) Administers the funds for administrative and technical support services; and

(9) Seeks listing for standards developed under these procedures as American National Standards through the accredited organization procedures of the American National Standards Institute when deemed appropriate by the Department.

(d) *Role of producers, distributors, users, and consumers.* Producers, distributors, users, consumers, and other interested groups may contribute to the development of a Voluntary Product Standard as follows:

(1) Initiate and participate in the development of the standard;

(2) Provide technical or other relevant counsel, as appropriate, relating to the standard;

(3) Promote the use of, and support for, the standard; and

(4) Assist in keeping the standard current with respect to advancing technology and marketing practices.

§ 10.1 Initiating development of a new standard.

(a) Any group or association of producers, distributors, users, or consumers, or a testing laboratory, or a State or Federal agency, may request the Department to initiate the development and publication of a Voluntary Product Standard under these procedures. Requests shall be in writing, signed by a representative of the group or agency, and forwarded to the Department. The initial request may be accompanied by a copy of a draft of the suggested standard.

(b) The request shall contain the following information:

(1) The purpose and scope of the suggested standard;

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(2) The names and addresses of the officers of the group or association, if the request is submitted by a group other than a State or Federal agency or other than a nationally recognized organization;

(3) Evidence that the development and publication of the standard meets the criteria for Department sponsorship required in § 10.0(b); and

(4) A commitment to provide sufficient funding to cover all Department costs associated with the development and maintenance of the proposed Voluntary Product Standard.

(c) The Department may require additional information such as technical, marketing, or other appropriate data essential to discussion and development of the proposed standard, including, but not limited to, physical, mechanical, chemical, or performance characteristics, and production figures.

(d) Upon receipt of an appropriate request and after a determination by the Department that the development of a Voluntary Product Standard is justified, the Department may initiate the development by requesting that a draft of the suggested standard be prepared by an appropriate committee, provided such a draft has not previously been submitted under paragraph (a) of this section.

(e) The Department may initiate the development of a Voluntary Product Standard, if such action is deemed by the Department to be in the public interest, notwithstanding the absence of a request from an outside source. A voluntary standard initiated by the Department shall be processed in accordance with all requirements of these procedures and shall be developed in the same manner as a voluntary standard initiated by any group referred to in paragraph (a) of this section.

(f) An agreement regarding funding procedures and receipt of a deposit estimated by the Department to be sufficient to cover the first year's costs shall occur prior to the initiation of any project.

§ 10.2 Funding.

Groups who represent producers, distributors, consumers or users, or others that wish to act or continue to act as proponent organizations for the development or maintenance of a Voluntary Product Standard will be required to pay for administrative and technical support services provided by the National Bureau of Standards and such other direct or indirect costs associated with the development or maintenance of that standard as may be deemed appropriate by the Department, including costs to the Department in connection with the operation of the Standard Review Committee and the Standing Committee. Funds may also be provided by a government agency at the request of a proponent organization or when acting on its own behalf for the development or maintenance of a Voluntary Product Standard. Proponents of standards that meet sponsorship criteria established in these procedures shall furnish an initial deposit of funds sufficient to cover the first year's services and other costs. Estimated annual costs will be based on an hourly rate for salary and overhead established by the Department for the National Bureau of Standards' administrative and technical support services plus estimates of direct costs to provide funds for such items as the travel of consumer representatives unable to otherwise attend committee meetings, travel for Department staff, and printing costs. Project funds will be reviewed annually. Excess funds may be refunded or applied to the next accounting period. Should funds from deposits be inadequate during an accounting period, work on the project will continue only if funds are restored to a level estimated adequate to complete the 12-month period.

§ 10.3 Development of proposed standard.

(a) A proposed standard as submitted to the Department:

(1) Shall be based on adequate technical information, or, in the case of size standards (including standards covering the quantities for packaged consumer commodities), on adequate marketing information, or both, as de-

termined to be appropriate by the Department;

(2) Shall not be contrary to the public interest;

(3) Shall be technically appropriate and such that conformance or nonconformance with the standard can be determined either during or after the manufacturing process by inspection or other procedures which may be utilized by either an individual or a testing facility competent in the particular field;

(4) Shall follow the form prescribed by the National Bureau of Standards. (Copies of the recommended format may be obtained upon request from the Office of Engineering Standards, National Bureau of Standards, Washington, D.C. 20234);

(5) Shall include performance requirements if such are deemed by the Department to be technically sound, feasible, and practical, and the inclusion of such is deemed to be appropriate; and

(6) May include dimensions, sizes, material specifications, product requirements, design stipulations, component requirements, test methods, testing equipment descriptions, and installation procedures. The appropriateness of the inclusion in a standard of any particular item listed in this paragraph shall be determined by the Department.

(b) A proposed standard that is determined by the Department to meet the criteria set forth in paragraph (a) of this section may be subjected to further review by an appropriate individual, committee, organization, or agency (either government or nongovernment, but not associated with the proponent group).

(c) A proposed standard may be circulated by the Department to appropriate producers, distributors, users, consumers, and other interested groups for consideration and comment as well as to others requesting the opportunity to comment.

(d) The proponent group or appropriate committee which drafted the initial proposal under § 10.1(d) shall consider all comments and suggestions submitted by the reviewer designated under paragraph (b) of this section, and those received by the Department

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as a result of any circulation under paragraph (c) of this section, and may make such adjustments in the proposal as are technically sound and as are believed to cause the standard to be generally acceptable to producers, distributors, users, consumers, and other interested parties. The proposal will then be submitted to the Department for further processing.

§ 10.4 Establishment of the Standard Review Committee.

(a) The Department shall establish and appoint the members of a Standard Review Committee within a reasonable time after receiving a proposed standard. The committee shall consist of qualified representatives of producers, distributors, and users or consumers of the product for which a standard is sought or any other appropriate general interest groups such as State and Federal agencies. Representatives of Federal agencies shall be advisory, nonvoting members. (Alternates to committee members may be designated by the Department). When deemed appropriate by the Department, project funds under § 10.2 may be made available to assure participation by consumer interests on the committee at required meetings.

(b) A Standard Review Committee may remain in existence for a period necessary for the final development of the standard, or for 2 years, whichever is less.

(c) The Department shall be responsible for the organization of the committee. Any formal operating procedures developed by the committee shall be subject to approval by the Department. The committee may conduct business either in a meeting or through correspondence, but only if a quorum participates. A quorum shall consist of two-thirds of all voting members of the committee. A majority of the voting members of the committee participating shall be required to approve any actions taken by the committee except for the action of recommending a standard to the Department, the requirements for which are contained in § 10.5(b).

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§ 10.5 Development of a recommended standard.

(a) The Standard Review Committee, with the guidance and assistance of the Department and, if appropriate, the reviewer designated under § 10.3(b), shall review a proposed standard promptly. If the committee finds that the proposal meets the requirements set forth in § 10.3(a), it may recommend to the Department that the proposal be circulated for acceptance under § 10.6. If, however, the committee finds that the proposal being reviewed does not meet the requirements set forth in § 10.3(a), the committee shall change the proposal, after consulting with the proponent group, so that these requirements are met, before recommending such proposal to the Department.

(b) The recommendation of a standard by the Standard Review Committee shall be approved by at least three-quarters, or rejected by more than one-quarter, of all of the members of the committee eligible to vote. The voting on the recommendation of a standard shall be conducted by the Department if conducted by letter ballot. If such voting is accomplished at a meeting of the committee, the balloting shall be either by roll call or by signed written ballot conducted by the Department or the chairman of this committee. If conducted by the chairman, a report of the vote shall be made to the Department within 15 days. If the balloting at the meeting does not result in either approval by at least three-quarters of all members (or alternates) eligible to vote (whether present or not), or rejection by more than one-quarter of the members (or alternates) of the committee eligible to vote, the balloting shall be disregarded and the Department shall subsequently conduct a letter ballot of all members of the committee.

(c) Any member of the committee casting a negative ballot shall have the right to support his objection by furnishing the chairman of the committee and the Department with a written statement setting forth the basis for his objection. The written statement of objection shall be filed within 15 days after the date of the

meeting during which the voting on the standard was accomplished, or, in the case of a letter ballot, within the time limit established for the return of the ballot.

(d) At the time a recommended standard is submitted to the Department, the Chairman of the Standard Review Committee shall furnish a written report in support of the committee's recommendation. Such report shall include a statement with respect to compliance with the requirements as established by these procedures, a discussion of the manner in which any objections were resolved, and a discussion of any unresolved objections together with the committee's reasons for rejecting such unresolved objections.

§ 10.6 Procedures for acceptance of recommended standard.

(a) Upon receipt from the Standard Review Committee of a recommended standard and report, the Department shall give appropriate public notice and distribute the recommended standard for acceptance unless:

(1) Upon a showing by any member of the committee who has voted to oppose the recommended standard on the basis of an unresolved objection, the Department determines that if such objection were not resolved, the recommended standard:

(i) Would be contrary to the public interest, if published;

(ii) Would be technically inadequate; or

(iii) Would be inconsistent with the law or established public policy; or

(2) The Department determines that all criteria and procedures set forth herein have not been met satisfactorily or that there is a legal impediment to the recommended standard.

(b) Distribution for acceptance or rejection for the purpose of determining general concurrence will be made to a list compiled by the Department, which, in the judgment of the Department, shall be representative of producers, distributors, and users and consumers.

(c) Distribution for comment will be made to any party filing a written request with the Department, and to such other parties as the Department

may deem appropriate, including testing laboratories and interested State and Federal agencies.

(d) The Department shall analyze the recommended standard and the responses received under paragraphs (b) and (c) of this section. If such analysis indicates that the recommended standard is supported by a consensus, it shall be published as a Voluntary Product Standard by the Department: *Provided*, That all other requirements listed in these procedures have been satisfied.

(e) The following definitions shall apply to the terms used in this section:

(1) "Consensus" means general concurrence and, in addition, no substantive objection deemed valid by the Department.

(2) "General concurrence" means acceptance among those responding to the distribution made under paragraph (b) of this section in accordance with the conditions set forth in paragraph (f) of this section.

(3) "Substantive objection" means a documented objection based on grounds that one or more of the criteria set forth in these procedures has not been satisfied.

(4) "Average industry acceptance" means a percentage equal to the sum of the percentages of acceptance obtained from responses to distribution of the recommended standard in the producer segment, the distributor segment, and the user and consumer segment, divided by three. No consideration will be given to volume of production or volume of distribution in determining average industry acceptance.

(5) "Producer segment" means those persons who manufacture or produce the product covered by the standard.

(6) "Distributor segment" means those persons who distribute at wholesale or retail the product covered by the standard.

(7) "User and consumer segment" means those persons who use or consume the product covered by the standard.

(8) "Acceptance by volume of production" means the weighted percentage of acceptance of those responding to the distribution in the producer segment. The weighting of each response

will be made in accordance with the volume of production represented by each respondent.

(9) "Acceptance by volume of distribution" means the weighted percentage of acceptance of those responding to the distribution in the distributor segment. The weighting of each response will be made in accordance with the volume of distribution represented by each respondent.

(f) A recommended standard shall be deemed to be supported by general concurrence whenever:

(1) An analysis of the responses to the distribution under paragraph (b) of this section indicates:

(i) An average industry acceptance of not less than 75 percent;

(ii) Acceptance of not less than 70 percent by the producer segment, the distributor segment, and the user and consumer segment, each segment being considered separately; and

(iii) Acceptance by volume of production and acceptance by volume of distribution of not less than 70 percent in each case: *Provided*, That the Department shall disregard acceptance by volume of production or acceptance by volume of distribution or both unless, in the judgment of the Department, accurate figures for the volume of production or distribution are reasonably available and an evaluation of either or both of such acceptances is deemed necessary by the Department; or

(2) The Department determines that publication of the standard is appropriate under the procedures set forth in paragraph (g) of this section and, in addition, an analysis of the responses to the distribution under paragraph (b) of this section indicates:

(i) An average industry acceptance of not less than 66% percent;

(ii) Acceptance of not less than 60 percent by the producer segment, the distributor segment, and the user and consumer segment, each segment being considered separately; and

(iii) Acceptance by volume of production and acceptance by volume of distribution of not less than 60 percent in each case: *Provided*, That the Department shall disregard acceptance by volume of production or acceptance by volume of distribution or

both unless, in the judgment of the Department, accurate figures for the volume of production or distribution are reasonably available and an evaluation of either or both of such acceptances is deemed necessary by the Department.

(g) A recommended standard which fails to achieve the acceptance requirements of paragraph (f)(1) of this section, but which satisfies the acceptance criteria of paragraph (f)(2) of this section, shall be returned to the Standard Review Committee for reconsideration. The committee, by the affirmative vote of not less than three-quarters of all members eligible to vote, may resubmit the recommended standard without change to the Department with a recommendation that the standard be published as a Voluntary Product Standard. The Department shall then conduct a public rule-making hearing in accordance with the requirements of law as set forth in section 553 of Title 5, United States Code, to assist it in determining whether publication of the standard is in the public interest. If the Department determines that publication of the standard is in the public interest, the standard shall be published as a Voluntary Product Standard.

§ 10.7 Procedure when a recommended standard is not supported by a consensus.

If the Department determines that a recommended standard is not supported by a consensus, the Department may:

(a) Return the recommended standard to the Standard Review Committee for further action, with or without suggestions;

(b) Terminate the development of the recommended standard under these procedures; or

(c) Take such other action as it may deem necessary or appropriate under the circumstances.

§ 10.8 Standing Committee.

(a) The Department shall establish and appoint the members of a Standing Committee prior to the publication of a standard. The committee may include members from the Standard

Review Committee, and shall consist of qualified representatives of producers, distributors, and users or consumers of the product covered by the standard, and representatives of appropriate general interest groups such as municipal, State, and Federal agencies. Representatives of Federal agencies shall be advisory, nonvoting members. (Alternates to committee members may be designated by the Department). When deemed appropriate by the Department, project funds under § 10.2, may be made available to assure participation by consumer interests on the committee at required meetings.

(b) Appointments to a Standing Committee may not exceed a term of 5 years. However, the committee may be reconstituted by the Department whenever appropriate, and members may be reappointed by the Department to succeeding terms. Appointments to the committee will be terminated upon the withdrawal of the standard.

(c) The Department shall be responsible for the organization of the committee. Any formal operating procedures developed by the committee shall be subject to approval by the Department. The committee may conduct business either in a meeting or through correspondence, but only if a quorum participates. A quorum shall consist of two-thirds of all voting members of the committee. A majority of the voting members of the committee participating shall be required to approve any actions taken by the committee except for the approval of revisions of the standard which shall be governed by the provisions of § 10.5 (b), (c), and (d).

(d) The members of a Standing Committee should be knowledgeable about:

(1) The product or products covered by the standard;

(2) The standard itself; and

(3) Industry and trade practices relating to the standard.

(e) The committee shall:

(1) Keep itself informed of any advancing technology or marketing practices that might affect the standard;

(2) Provide the Department with interpretations of provisions of the standard upon request;

(3) Make recommendations to the Department concerning the desirability or necessity of revising or amending the standard;

(4) Receive and consider proposals to revise or amend the standard; and

(5) Recommend to the Department the revision or amendment of a standard.

§ 10.9 Publication of standard.

(a) A Voluntary Product Standard published by the Department under these procedures shall be assigned an appropriate number for purposes of identification and reference. Public notice shall be given regarding the publication and identification of the standard. A voluntary standard by itself has no mandatory or legally binding effect. Any person may choose to use or not to use such a standard. Appropriate reference in contracts, codes, advertising, invoices, announcements, product labels, and the like may be made to a Voluntary Product Standard published under these procedures. Such reference shall be in accordance with such policies as the Department may establish, but no product may be advertised or represented in any manner which would imply or tend to imply approval or endorsement of that product by the Department or by the Federal Government.

(b) Included in the costs to the proponent shall be a fee, when appropriate, to cover the initial publication expenses incurred in printing the final standard. This fee shall entitle the proponent group to 1,000 copies of the standard. Additional copies may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

§ 10.10 Review of published standards.

(a) Each standard published under these or previous procedures shall be reviewed regularly to determine the feasibility of transferring sponsorship to a private standards-writing organization. While the Department encourages the development of standards to replace Voluntary Product Standards by private standards-writing organizations, withdrawal of a Voluntary Product Standard, which meets the re-

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quirements of § 10.0(b), shall not be considered until a replacement standard is published.

(b) Each standard published under these or previous procedures shall be reviewed by the Department, with such assistance of the Standing Committee or others as may be deemed appropriate by the Department, within 5 years after initial issuance or last revision and at least every 5 years thereafter. The purpose of this review shall be to determine whether the standard has become obsolete, technically inadequate, no longer acceptable to or used by the industry, or inconsistent with law or established public policy.

(c) If any of the above conditions is found to exist, the Department shall initiate action to amend, revise, or withdraw the standard in accordance with § 10.11 or § 10.13. If none of the above conditions is found to exist, the standard shall be kept in effect provided adequate funding is maintained.

§ 10.11 Revision or amendment of a standard.

(a) A published standard shall be subject to revision or amendment when it is determined to be inadequate by its Standing Committee or by the Department for one or more of the following reasons or for any other appropriate reason:

(1) Any portion of the standard is obsolete, technically inadequate, or no longer generally acceptable to or used by the industry;

(2) The standard or any part of it is inconsistent with law or established public policy; or

(3) The standard or any part of it is being used to mislead users or consumers or is determined to be against the interest of users, consumers, or the public in general.

(b) A revision of a standard shall be considered by the Department to include changes which are comprehensive in nature; which have a substantive effect on the standard, which change the level of performance or safety or the design characteristics of the product being standardized, or which cannot reasonably be injected into a standard without disturbing the general applicability of the standard. Each suggestion for revision shall be

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submitted by the Department to the Standing Committee for appropriate consideration. The Standing Committee shall serve the same functions in the revision of a standard as the Standard Review Committee serves in the development of a new standard. The processing of a revision of a standard shall be dependent upon the age of the standard as computed from its effective date and shall be accomplished as follows:

(1) A proposed revision of a standard older than 5 years at the time such proposed revision is submitted to the Standing Committee by the Department shall be processed as a new standard under these procedures and, when approved for publication, the standard shall be republished and reidentified to indicate the year in which the revision became effective. The revised standard shall supersede the previously published standard.

(2) A proposed revision of a standard less than 5 years at the time such proposed revision is submitted to the Standing Committee by the Department shall be processed as a new standard except that:

(i) Distribution for acceptance or rejection shall be made to an appropriate list of producers, distributors, and users and consumers compiled by the Department;

(ii) If the revision affects only one subsection of the requirement section and/or only one subsection of the test methods section, it may be circulated separately for determining consensus and subsequently published as an addendum to the standard with appropriate dissemination and public notice of the addendum; and

(iii) If the revision does not change the level of performance or safety or the design characteristics of the product being standardized, the standard need not be reidentified.

(c) An amendment to a standard shall be considered by the Department to be any non-editorial change which is not comprehensive in nature, which has no substantive effect on the standard which does not change the level of performance or safety or the design characteristics of the product being standardized, and which reasonably can be injected into a standard with-

out disturbing the general applicability of the standard. Each suggestion for amendment shall be submitted by the Department to the Standing Committee for appropriate consideration. An amendment to a standard recommended by not less than 90 percent of the members of the committee eligible to vote and found acceptable by the Department, shall be published as an addendum (until the standard is republished) and distributed to acceptors of record. Public notice of the amendment shall be given and copies of the amendment shall be distributed to those filing written requests.

§ 10.12 Editorial changes.

The Department may, without prior notice, make such editorial or other minor changes as it deems necessary to reduce ambiguity or to improve clarity in any proposed, recommended, or published standard, or revision or amendment thereof.

§ 10.13 Withdrawal of a published standard.

(a) All standards published prior to the effective date of these procedures will be withdrawn unless proponent groups or other interested parties submit a request to retain a particular standard to the Director of the National Bureau of Standards. The request must be submitted within 60 days from the effective date of these procedures and must demonstrate that the standard meets the criteria set out in § 10.0(b). The Director may retain those standards for which a request was received when he determines the criteria have been met. If the Director determines that a particular standard does not meet these criteria, after consultation with the Standing Committee, or if no request is received, the standard will be withdrawn unless the Director's determination is appealed to the Assistant Secretary of Commerce for Productivity, Technology and Innovation (Assistant Secretary) under § 10.14.

(b) Standards published after the effective date of these procedures or expressly retained under paragraph (a) of this section may be withdrawn by the Director of the National Bureau of Standards at any time. Such action

will be taken, if, after consultation with the Standing Committee as provided in paragraph (b)(1) of this section and after public notice, the Director determines that the standard is: obsolete; technically inadequate; no longer generally acceptable to and used by the industry; inconsistent with law or established public policy; not in the public interest; or otherwise inappropriate; and revision or amendment is not feasible or would serve no useful purpose. Additionally, a standard may be withdrawn if it cannot be demonstrated that a particular standard has substantial public impact, that it does not duplicate a standard published by a private standards-writing organization, or that lack of government sponsorship would result in significant public disadvantage for legal reasons or for reasons of domestic and international trade. The Director may withdraw a standard if costs to maintain such a standard are not reimbursed by the proponent or other government agencies.

(1) Before withdrawing a standard published under these procedures, the Director will review the relative advantages and disadvantages of amendment, revision, development of a new standard, or withdrawal with the members of the Standing Committee, if such committee was appointed or reappointed within the previous five years.

(2) Public notice of intent to withdraw an existing standard published under these procedures shall be given and a 30-day period will be provided for the filing with the Director of written objections to the withdrawal. Such objections will be considered and analyzed by the Director before a determination is made to withdraw the standard. If the Director determines that a particular standard does not meet the criteria set out in § 10.0(b), the standard will be withdrawn unless the Director's determination is appealed to the Assistant Secretary of Commerce for Productivity, Technology and Innovation under § 10.14.

(c) The filing under paragraph (a) or (b) of this section of a request to retain a standard or standards shall operate to stay the withdrawal of such standard or standards until the Direc-

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tor's determination has been made. If the Director determines that the requested standard or standards shall be withdrawn, the stay will remain in effect, if an appeal is filed in accordance with the requirements of § 10.14, until the decision of the Assistant Secretary is announced in the **FEDERAL REGISTER**. If, however, no appeal is received, after allowing a reasonable period for the appeal to be received by the Assistant Secretary following the expiration of the appeal period provided in § 10.14, the Director shall announce withdrawal of the particular standard or standards effective 60 days from the date of publication of that action in the **FEDERAL REGISTER**.

(d) Withdrawal will terminate the authority to refer to the published standard as a voluntary standard developed under Department procedures, from the effective date of the withdrawal.

§ 10.14 Appeals.

(a) An appeal to the Assistant Secretary of Commerce for Productivity, Technology and Innovation (Assistant Secretary) from the Director's determination by the proponent group or other interested parties which had submitted a request under paragraph (a) or had filed objections under this paragraph (b)(2) of § 10.13 must be made within 30 days following receipt of the Director's determination. The appeal must be in writing and it must demonstrate why the Director's determination should be overruled. The address for such appeal is the Assistant Secretary of Commerce for Productivity, Technology and Innovation, Room 3862, U.S. Department of Commerce, Washington, D.C. 20230.

(1) The Assistant Secretary shall within 30 days after receiving the appeal schedule an informal hearing at the Department of Commerce by publishing a notice in the **FEDERAL REGISTER** announcing such hearing and shall also notify the appellant by letter. The hearing date shall be not less than 20 days following the date of its announcement in the **FEDERAL REGISTER**. The hearing panel shall be chaired by the Assistant Secretary or his designee and shall consist of two other persons selected by the Assistant

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Secretary who have not been involved in the NBS Director's decision.

(2) The hearing shall be an informal, nonadversary proceeding at which there will be no formal pleadings or adverse parties. Witnesses should submit a written presentation for the record.

(3) The presiding officer shall have the right to apportion the time available for making presentations in an equitable manner, and to terminate or shorten the presentation of any witnesses when, in his opinion, such presentation is repetitive or not relevant to the purpose of the hearing. The presiding officer has the right to exercise such authority as may be necessary to insure the equitable and efficient conduct of the hearing and to maintain order.

(4) The informal hearing shall be open to the members of the public whether or not such members wish to testify at the hearing. A transcript will be made of the informal hearing.

(b) The Assistant Secretary's decision on the appeal shall be announced in the **FEDERAL REGISTER** within 30 days after receipt of the transcript of the hearing and shall also be communicated to the appellant by letter within that same time frame.

(c) If the Assistant Secretary's decision upholds the NBS Director's determination to withdraw a particular standard, the effective date of the withdrawal of that standard shall be 60 days after the publication of the Assistant Secretary's decision in the **FEDERAL REGISTER**. The decision of the Assistant Secretary shall be the final Departmental decision in the matter.

(d) The full text of the determination by the Director of the National Bureau of Standards, any appeal of that determination or comments on it, all materials presented by witnesses at the informal hearing and written comments submitted for the hearing record, as well as the transcript of the informal hearing shall be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, Main Commerce Building, 14th Street between E Street and Constitution Avenue, NW., Washington, D.C. 20230.

§ 10.15 Effect of procedures.

Nothing contained in these procedures shall be deemed to apply to the development, publication, revision, amendment, or withdrawal of any standard which is not identified as a "Voluntary Product Standard" by the Department. The authority of the Department with respect to engineering standards activities generally, including the authority to publish appropriate recommendations not identified as "Voluntary Product Standards," is not limited in any way by these standards.

PART 11—[RESERVED]

PART 12—FAIR PACKAGING AND LABELING

Sec.

12.1 Introduction.

12.2 Undue proliferation.

12.3 Development of voluntary product standards.

12.4 Report to the Congress.

AUTHORITY: Secs. 5(d), 5(e), 80 Stat. 1298, 15 U.S.C. 1454; sec. 3, Dept. Order 177 (31 FR 6746), as amended (32 FR 3110).

SOURCE: 32 FR 11074, July 29, 1967, unless otherwise noted.

§ 12.1 Introduction.

(a) These procedures apply to the discharge of the responsibility given to the Secretary of Commerce by sections 5(d) and 5(e) of the Fair Packaging and Labeling Act (Pub. L. 89-755, 80 Stat. 1299), hereinafter called the "Act". The word "Secretary", as used hereinafter, shall refer to the Secretary of Commerce or his authorized delegate.

(b) The Secretary does not have the responsibility or the authority under the Act to issue any regulations governing the packaging or labeling practices of private industry.

(c) The Secretary does have the responsibility and authority to:

(1) Determine whether the reasonable ability of consumers to make value comparisons with respect to any consumer commodity or reasonably comparable consumer commodities is impaired by undue proliferation of the weights, measures, or quantities in which such commodity or commodities

are being distributed in packages for sale at retail.

(2) Request manufacturers, packers, and distributors, where a determination of undue proliferation has been made, to participate in the development of a voluntary product standard under the procedures governing the Department's voluntary standards program.

(3) Report to Congress with a recommendation as to whether legislation providing regulatory authority should be enacted, when after 1 year following the date private industry has been requested to participate in the development of a voluntary product standard it is determined that such a standard will not be published, or when following the publication of such a standard it is determined that the standard has not been observed.

(d) The Act does not furnish a detailed, definitive explanation of "undue proliferation". It does, however, point out that the condition of "undue proliferation" must be one which "impairs the reasonable ability of consumers to make value comparisons" with respect to consumer commodities. Generally, therefore, the Department will determine "undue proliferation" on a case-by-case basis, and, accordingly, is establishing by these procedures an orderly process for such determinations.

(e) As used hereinafter the term "undue proliferation" shall refer to such undue proliferation—of the weights, measures or quantities in which any consumer commodity or reasonably comparable consumer commodities are being distributed for sale at retail—as impairs the reasonable ability of consumers to make value comparisons with respect to such consumer commodity or commodities, as set out in section 5(d) of the Act.

§ 12.2 Undue proliferation.

(a) Information as to possible undue proliferation. Any person or group, including a State or local governmental entity, is invited to communicate information to the Secretary concerning the possible existence of undue proliferation. Such communications should

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be in writing and include supporting information and explanations.

(b) *Initiation of inquiry as to undue proliferation.* Upon receipt of information regarding the possible existence of undue proliferation, the Secretary will determine whether there has been a showing of good cause warranting an inquiry. If the Secretary determines that good cause exists, he shall initiate an inquiry for the purpose of finding facts concerning the existence of undue proliferation.

(c) *Procedures for Inquiry—(1) Cooperation with State and local officials.* Any inquiry initiated under paragraph (b) of this section may be conducted in cooperation with State and local weights and measures officials.

(2) *Participation by interested persons.* The Secretary may, during the course of the inquiry, afford interested persons or groups an opportunity to submit in writing comments, data, arguments, views, or other information relevant to the inquiry.

(d) *Proposed determination as to existence of undue proliferation.* (1) If, after consideration of all relevant information, the Secretary concludes that undue proliferation appears to exist, he shall publish a proposed determination to this effect. The proposed determination shall identify the particular consumer commodity or commodities involved and shall be accompanied by a concise statement of the facts upon which it is based.

(2) Within 60 days after publication of the proposed determination, any interested party may submit in writing comments, data, arguments, views, or other information relevant to the proposed determination. All written submissions shall be made a part of the public record.

(3) Within 30 days after the proposed determination has been published, any interested party may request in writing an oral hearing to present his views. The granting of such a hearing shall be at the discretion of the Secretary. Any such hearing shall be public and notice thereof shall be published at least 15 days in advance. A transcript of the hearing shall be made part of the public record.

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(e) *Final determination as to undue proliferation.* As soon as practicable following the conclusion of the proceedings described in paragraph (d) of this section, the Secretary shall either publish a final determination of undue proliferation, or he shall publish a notice withdrawing his proposed determination of undue proliferation. In no event shall the withdrawal of a proposed determination operate to preclude the initiation of another inquiry regarding the same or similar subject matter under paragraph (b) of this section.

§ 12.3 Development of voluntary product standards.

(a) *Invitation to participate in the development of a voluntary product standard.* Whenever the Secretary publishes a final determination of undue proliferation under § 12.2(e), he shall invite manufacturers, packers, and distributors of the commodity or commodities involved to participate in the development of a voluntary product standard in accordance with the terms of the Act and the Department's published procedures for voluntary product standards. The term "Voluntary Product Standard" as used in this section means a standard for weights, measures or quantities in which the commodity or commodities are being distributed in packages for sale at retail.

(b) *Determination that voluntary product standard will not be published.* (1) If a voluntary product standard has not been developed within one year from the date on which participation was invited, the Secretary may conclude that a voluntary product standard will not likely be published. Upon reaching such a conclusion, the Secretary will publish a proposed determination that a voluntary product standard will not be published.

(2) Within 60 days after publication of the proposed determination, any interested party may submit in writing comments, data, arguments, views, or other information relevant to the proposed determination. All written submissions shall be made a part of the public record.

(3) Within 30 days after the proposed determination has been published, any interested party may request in writing an oral hearing to present his views. The granting of such a hearing shall be at the discretion of the Secretary. Any such hearing shall be public and notice thereof shall be published at least 15 days in advance. A transcript of the hearing shall be made part of the public record.

(4) As soon as practicable following the conclusion of the proceedings described in paragraphs (b)(2) and (3) of this section, the Secretary shall either publish a final determination that a voluntary product standard will not be published, or he shall publish a notice withdrawing his proposed determination under paragraph (b)(1) of this section. In no event shall the withdrawal of a proposed determination operate to preclude the publication of another proposed determination under paragraph (b)(1) of this section with respect to the same or similar subject matter.

(c) *Determination that a published voluntary product standard has not been observed.* (1) Whenever the Secretary has reason to believe that a voluntary product standard published under these procedures is not being observed he shall initiate an inquiry to determine such fact.

(2) If, on the basis of the information developed during the inquiry, the Secretary concludes that the voluntary product standard is not being observed, he shall publish a proposed determination to this effect. The proposed determination shall identify the particular standard involved and shall be accompanied by a concise statement of the facts upon which it is based.

(3) Within 60 days after publication of the proposed determination, any interested party may submit in writing comments, data, arguments, views, or other information relevant to the proposed determination. All written submissions shall be made a part of the public record.

(4) Within 30 days after the proposed determination has been published, any interested party may request in writing an oral hearing to

present his views. The granting of such a hearing shall be at the discretion of the Secretary. Any such hearing shall be public and notice thereof shall be published at least 15 days in advance. A transcript of the hearing shall be made part of the public record.

(5) As soon as practicable following the conclusion of the proceedings described in paragraphs (c)(3) and (4) of this section, and upon consideration of all relevant information, the Secretary shall either publish a final determination that the voluntary product standard is not being observed, or he shall publish a notice withdrawing his proposed determination under paragraph (c)(2) of this section. In no event shall the withdrawal of a proposed determination operate to preclude the initiation of another inquiry regarding the same standard under paragraph (c)(1) of this section.

§ 12.4 Report to the Congress.

Whenever the Secretary publishes a final determination under § 12.3(b)(4) or § 12.3(c)(5), he shall promptly report such determination to the Congress with a statement of the efforts that have been made under the voluntary standards program and his recommendation as to whether Congress should enact legislation providing regulatory authority to deal with the situation in question.

PART 13—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF COMMERCE PROGRAMS AND ACTIVITIES

Sec.

- 13.1 Purpose.
- 13.2 Definitions.
- 13.3 Programs and activities of the Department subject to the regulations.
- 13.4 General responsibilities under the Order.
- 13.5 Obligations with respect to Federal interagency coordination.
- 13.6 State selection of programs and activities.
- 13.7 Communication with state and local officials concerning the Department's programs and activities.
- 13.8 Opportunity to comment on proposed Federal financial assistance and direct Federal development.

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13.9 Receipt of and response to comments.

13.10 Accommodation of intergovernmental concerns.

13.11 Obligations in interstate situations.

AUTHORITY: Executive Order 12372, July 14, 1982, 47 FR 30959, as amended April 8, 1983, 48 FR 15587, sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec. 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334).

SOURCE: 48 FR 29134, June 24, 1983, unless otherwise noted.

§ 13.1 Purpose.

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 13.2 Definitions.

"Department" means the U.S. Department of Commerce.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Secretary" means the Secretary of the U.S. Department of Commerce or an official or employee of the Department acting for the Secretary under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the

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U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 13.3 Programs and activities of the Department subject to the regulations.

The Secretary publishes in the **FEDERAL REGISTER** a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 13.4 General responsibilities under the Order.

(a) The Secretary provides opportunities for consultation by elected officials of those state and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, the Department.

(b) If a state adopts a process under the Order to review and coordinate proposed Federal financial assistance and direct Federal development, the Secretary, to the extent permitted by law:

(1) Uses the state process to determine official views of state and local elected officials;

(2) Communicates with state and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate state and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the state process;

(4) Allows the states to simplify and consolidate existing federally required state plan submissions;

(5) Where state planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of state plans for federally required state plans;

(6) Seeks the coordination of views of affected state and local elected officials in one state with those of another state when proposed Federal financial assistance or direct Federal development has an impact on interstate

metropolitan urban centers or other interstate areas; and

(7) Supports state and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, state or local elected officials.

§ 13.5 Obligations with respect to Federal interagency coordination.

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

§ 13.6 State selection of programs and activities.

(a) A state may select any program or activity published in the FEDERAL REGISTER in accordance with § 13.3 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Secretary of the Department's programs and activities selected for that process.

(c) A state may notify the Secretary of changes in its selections at any time. For each change, the state shall submit to the Secretary an assurance that the state has consulted with elected local elected officials regarding the change. The Department may establish deadlines by which states are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a state's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

§ 13.7 Communication with state and local officials concerning the Department's programs and activities.

(a) For those programs and activities covered by a state process under § 13.6,

the Secretary, to the extent permitted by law:

(1) Uses the state process to determine views of state and local elected officials; and,

(2) Communicates with state and local elected officials, through the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Secretary provides notice to directly affected state, areawide, regional, and local entities in a state of proposed Federal financial assistance or direct Federal development if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process. This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which the Department in its discretion deems appropriate.

§ 13.8 Opportunity to comment on proposed Federal financial assistance and direct Federal development.

(a) Except in unusual circumstances, the Secretary gives state processes or directly affected state, areawide, regional and local officials and entities at least:

(1) 30 days from the date established by the Secretary to comment on proposed Federal financial assistance in the form of noncompeting continuation awards; and

(2) 60 days from the date established by the Secretary to comment on proposed direct Federal development or Federal financial assistance other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 60-day opportunity for review and comment.

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§ 13.9 Receipt of and response to comments.

(a) The Secretary follows the procedures in § 13.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all Federal agencies; and

(2) That office or official transmits a state process recommendation for a program selected under § 13.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 13.10 of this part.

(e) The Secretary considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 13.10 of this part, when such comments are provided by a single point of contact, by the applicant, or directly to the Department by a commenting party.

§ 13.10 Accommodation of intergovernmental concerns.

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either:

(1) Accepts the recommendation;

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(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision in such form as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 13.11 Obligations in interstate situations.

(a) The Secretary is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to § 13.10 of this part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 13.10 if a state process provides a state process recommendation to the Department through a single point of contact.

PART 14—PROCEDURAL RULES FOR PROCEEDINGS CONDUCTED PURSUANT TO ENFORCEMENT OF EXECUTIVE ORDER 11246, AS AMENDED, AND RULES, REGULATIONS, AND ORDERS THEREUNDER

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AUTHORITY: Executive Order 11246, 3 CFR 1965 Comp., as amended.

SOURCE: 36 FR 5906, Mar. 31, 1971, unless otherwise noted.

GENERAL INFORMATION

§ 14.1 Authority.

These rules of procedure supplement, and are established pursuant to, the provisions of 41 CFR 60-1.26(b).

§ 14.2 Scope of rules.

These rules govern the practice and procedure for proceedings conducted, and decisions made, by the Department precedent to the imposition of sanctions under section 209(a) (1), (5), and (6) of Executive Order 11246, as amended, for violations of Executive Order 11246, as amended, and rules, regulations, and orders thereunder.

[36 FR 5906, Mar. 31, 1971, as amended at 36 FR 7218, Apr. 16, 1971]

§ 14.3 Definitions.

(a) "Department" means the "Department of Commerce".

(b) "Secretary" means "Secretary of Commerce".

(c) "Notice" means "Notice of Hearing".

(d) "Party" means a respondent; the General Counsel, Maritime Administration; and any person or organization participating in a proceeding pursuant to § 14.8.

(e) "Respondent" means a person or organization against whom sanctions are proposed because of alleged violations of Executive Order 11246, as

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amended, and rules, regulations, and orders thereunder.

(f) "General Counsel" means "General Counsel, Maritime Administration".

(g) "Hearing clerk" means "Secretary, Maritime Administration".

[36 FR 5906, Mar. 31, 1971, as amended at 36 FR 7218, Apr. 16, 1971]

§ 14.4 Time computation.

In computing any period of time under these rules or in an order issued hereunder, the time begins with the day following the act or event, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which event it includes the next following business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

DESIGNATION AND RESPONSIBILITIES OF HEARING EXAMINER

§ 14.5 Designation.

Hearings shall be held before a hearing examiner designated by the Secretary. In the case of the death, illness, disqualification, or unavailability of the designated hearing examiner, another hearing examiner may be designated in his place.

§ 14.6 Authority and responsibilities.

(a) The hearing examiner shall have the duty to conduct a fair and impartial hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to those ends, including, but not limited to, the power to:

(1) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(2) Require parties to state their position with respect to the various issues in the proceeding.

(3) Establish rules for media coverage of the proceedings.

(4) Rule on motions, and other procedural items in matters before him.

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(5) Regulate the course of the hearing, the conduct of counsel, parties, and other participants.

(6) Examine witnesses and direct witnesses to testify.

(7) Receive, rule on, exclude, or limit evidence.

(8) Fix time limits for submission of written documents in matters before him.

(9) Take any action authorized by these Rules.

(10) Upon notice to all parties, modify or waive any rule upon a determination that no party will be prejudiced and that the ends of justice will thereby be served.

(b) The hearing examiner shall recommend a decision on the basis of the record before him. Together with his recommended decision, he shall propose findings of fact and conclusions of law to the Secretary.

APPEARANCE AND PRACTICE

§ 14.7 Participation by a party.

A party may appear in person, by representative, or by counsel, and participate fully in any proceeding held pursuant to these Rules.

§ 14.8 Determination of parties.

(a) The Respondent and the General Counsel, Maritime Administration are the initial parties to the proceeding. To the extent that proceedings hereunder are based in whole or in part on matters subject to a collective bargaining agreement, any labor organization which is a signatory to the agreement shall also have the right to participate as a party.

(b) Other persons or organizations shall have the right to participate as parties if the final decision could directly and adversely affect them or the class they represent, and if they may contribute materially to the disposition of the proceedings.

(c) Any person or organization wishing to participate as a party under this section shall submit a petition to the hearing examiner within 15 days after the notice has been filed. The petition should be filed with the hearing clerk and served on Respondent, on the General Counsel and on any other person or organization who has been

made a party at the time of filing. Such petition shall concisely state:

(1) Petitioner's interest in the proceeding, (2) how his participation as a party will contribute materially to the disposition of the proceeding, (3) who will appear for petitioner, (4) the issues on which petitioner wishes to participate, and (5) whether petitioner intends to present witnesses.

(d) The hearing examiner shall promptly ascertain whether there are objections to the petition. He shall then determine whether petitioners have the requisite interest to be a party in the proceedings, as defined in paragraphs (a) and (b) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the hearing examiner may request all such petitioners to designate a single representative, or he may recognize one or more of such petitioners to represent all such petitioners; provided that the representative of a labor organization qualifying to participate under paragraph (a) of this section must be permitted to participate as a party. The hearing examiner shall give each such petitioner written notice of the decision on his petition. If the petition is denied, he shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae. The hearing examiner shall give written notice to each party of each petition granted.

(e) Persons or organizations whose petition for party participation is denied may appeal the decision to the Secretary within 7 days of receipt of denial. The Secretary will make the final decision to grant or deny the petition.

§ 14.9 Determination and participation of amici.

(a) Any interested person or organization wishing to participate as amicus curiae in the proceeding shall file a petition before the commencement of the hearing. Such petition shall concisely state the petitioner's interest in the hearing and who will represent petitioner.

(b) The hearing examiner will grant the petition if he finds that the petitioner has an interest in the proceedings and may contribute materially to the disposition of the proceedings. The hearing examiner shall give the petitioner written notice of the decision on his petition. If the petition is denied, the hearing examiner shall briefly state the grounds for denial. The hearing examiner shall give written notice to each party of each petition granted.

(c) An amicus curiae is not a party but may only participate as provided in paragraph (d) of this section.

(d) An amicus curiae may submit a written statement of position to the hearing examiner at any time prior to the beginning of a hearing, and shall serve a copy on each party. He may also file a brief or written statement at such time as the parties submit proposed findings and conclusions and supporting briefs to the hearing examiner and at such times as the parties file exceptions to the decision of the hearing examiner.

FORM AND FILING OF DOCUMENTS

§ 14.10 Form.

Documents filed pursuant to a proceeding herein shall show the docket description and title of the proceeding, the party or amicus submitting the document, the date signed, and the title, if any, and address of the signatory. The original will be signed in ink by the person representing the party or amicus. Copies need not be signed, but the name of the person signing the original shall be reproduced.

§ 14.11 Filing and service.

(a) All documents submitted in a proceeding shall be served on all parties. The original and two copies of each document shall be submitted to the hearing clerk for filing. With respect to exhibits and transcripts of testimony, only originals need be filed.

(b) Service upon a party or amicus shall be made by delivering one copy of each document requiring service in person or by certified mail, return receipt requested, properly addressed with postage prepaid to the party or amicus or his attorney, or designated

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representative. Filing will be made in person or by certified mail, return receipt requested, to the hearing clerk, at the address stated in the notice of hearing.

(c) The date of filing or of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person.

(d) A copy of all documents submitted in a proceeding shall be sent to the hearing examiner.

§ 14.12 Certificate of service.

The original of every document filed and required to be served upon parties shall be endorsed with a certificate of service signed by the party or amicus curiae making service or by his attorney or representative, stating that such service has been made, the date of service, and the manner of service.

PROCEDURES

§ 14.13 Notice of hearing.

In response to Respondent's request for a hearing, the General Counsel shall serve on the Respondent, pursuant to 41 CFR 60-1.26(b)(1), a notice of hearing by registered mail, return receipt requested, to Respondent's last known address. Such notice shall contain the time and place of the hearing; the legal authority under which the proceedings are to be held; and the matters pursuant to which sanctions or other actions are proposed.

§ 14.14 Answer to notice.

Within 15 days after receipt of the notice of hearing, Respondent may file an answer. This answer shall admit or deny specifically and in detail matters set forth in each allegation of the notice unless Respondent is without knowledge, in which case his answer should so state, and the statement shall be deemed a denial. Matters not specifically denied shall be deemed admitted. Matters alleged in the answer as affirmative defenses shall be separately stated and numbered. Failure of Respondent to file an answer within the 15-day period following receipt of the notice may be deemed an admission of all facts recited in the notice.

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§ 14.15 Amendments.

The Department may amend its notice once as a matter of course before an answer is filed, and Respondent may amend its answer once as a matter of course not later than 15 days after it is filed. Other amendments of the notice or of the answer to the notice shall be made only by leave of the hearing examiner. An amended notice shall be answered within 10 days of its service, or within the time for filing an answer to the original notice, whichever period is longer.

§ 14.16 Motions.

Motions and petitions shall state the relief sought, the basis for relief and the authority relied upon. If made before or after the hearing itself, these matters shall be in writing. If made at the hearing, they may be stated orally; but the hearing examiner may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Within 8 days after a written motion or petition is served, any party may file a response to a motion or petition. An immediate oral response may be made to an oral motion. Oral argument on motions will be at the discretion of the hearing examiner.

§ 14.17 Disposition of motions.

The hearing examiner may not grant a written motion or petition prior to expiration of the time for filing responses thereto, but may overrule or deny such motion or petition without awaiting response: *Provided, however,* That prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately.

§ 14.18 Interlocutory appeals.

No interlocutory appeals will be permitted from an adverse ruling except as specifically provided in these rules.

§ 14.19 Exhibits.

Proposed exhibits shall be exchanged at the prehearing conference, or otherwise prior to the hearing, if the hearing examiner requires. Pro-

posed exhibits not so exchanged may be denied admission as evidence. The authenticity of all exhibits submitted prior to the hearing will be deemed admitted unless written objection thereto is filed and served on all parties, or unless good cause is shown for failure to file such written objection.

§ 14.20 Admissions as to facts and documents.

Not later than 25 days prior to the date of the hearing any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in, and exhibited with, the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters as to which an admission is requested shall be deemed admitted, unless within a period of 20 days, the party to whom the request is directed serves upon the requesting party a statement either (a) denying specifically the matters as to which an admission is requested, or (b) setting forth in detail the reasons why he cannot truthfully either admit or deny such matters.

§ 14.21 Discovery.

(a) *Methods.* Parties may obtain discovery by depositions, written interrogatories, production of documents, or other items; or by permission to enter property, for inspection and other purposes.

(b) *Scope.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the hearing.

(c) *Protective orders.* Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the hearing examiner may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

(d) *Sequence and timing.* Methods of discovery may be used in any sequence. The fact that a party is conducting discovery shall not operate to delay any other party's discovery.

(e) *Time limit.* Discovery by all parties will be completed within 75 days

from the date the notice of hearing is served on Respondent.

§ 14.22 Depositions.

(a) After the notice of hearing has been filed, any party may take the testimony of any person, including a party, by deposition upon oral examination. This may be done by stipulation or by notice, as set forth in paragraph (b) of this section.

(b)(1) The party will give reasonable notice in writing to every other party of the time and place for taking depositions, the name and address of each person to be examined, if known, or a general description sufficient to identify him or the particular class or group to which he belongs.

(2) The notice to a deponent may be accompanied by a request for the production of documents and tangible things at the taking of the deposition.

(3) A party may name as the deponent a corporation, partnership, association, or governmental agency and may designate a particular person within the organization whose testimony is desired and the matters on which examination is requested. If no particular person is named, the organization shall designate one or more agents to testify on its behalf, and may set forth the matters on which each will testify. The persons so designated shall testify as to matters known or reasonably available to the organization.

(c) Examination and cross-examination of witnesses may proceed as permitted at the hearing. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally record the testimony of the witness.

(d) If during the taking of a deposition there is bad faith in the conduct of the examination, annoyance, embarrassment, oppression of a deponent or party or improper questions propounded, a party or deponent may request suspension of the deposition. The deposition will then be adjourned. However, the objecting party or deponent must immediately move the hearing examiner for a ruling on the suspension. The hearing examiner may

§ 14.23

then limit the scope and/or manner of the taking of the deposition.

(e) The officer shall certify the deposition and promptly file it with the hearing clerk. Documents or true copies of documents and other items produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to the deposition.

(f) The party taking the deposition shall give prompt notice of its filing to all other parties.

§ 14.23 Use of depositions at hearing.

(a) Any part or all of a deposition, so far as admissible under § 14.31 applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof as follows:

(1) Any deposition may be used for contradiction or impeachment of the deponent as a witness.

(2) The deposition of a party, or of an agent designated to testify on behalf of a party, may be used by an adverse party for any purpose.

(3) The deposition of any witness may be used if the party offering the deposition has been unable to procure his attendance or if he is unable to testify by reason of age; illness; infirmity; imprisonment; death, his residence outside the State or if he is out of the country, unless his absence was procured by the party offering his deposition.

(b) If only part of a deposition is offered in evidence, the remainder becomes subject to introduction by any party.

(c) Objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

§ 14.24 Interrogatories to parties.

(a) Any party may serve upon any other party written interrogatories after the notice of hearing has been filed. If the party served is a corporation, partnership, association, or governmental agency, an agent shall fur-

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nish such information as is available to the party.

(b) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney or other representative making them. Answers and objections shall be made within 30 days after the service of the interrogatories. The party submitting the interrogatories may move for an order under § 14.26 with respect to any objection to or other failure to answer an interrogatory.

(c) Interrogatories shall relate to any matter not privileged which is relevant to the subject matter of the hearing.

§ 14.25 Production of documents and things and entry upon land for inspection and other purposes.

(a) After the notice of hearing has been filed, any party may serve on any other party a request to produce and/or permit the party, or someone acting on his behalf, to inspect and copy any designated documents, phonorecords, and other data compilations from which information can be obtained and which are in the possession, custody or control of the party upon whom the request is served. If necessary, translation of data compilations shall be done by the party furnishing the information.

(b) After the notice of hearing has been filed, any party may serve on any other party a request to permit entry upon designated property in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying or photographing, testing, or sampling the property or any designated object.

(c) Each request shall set forth with reasonable particularity the items to be inspected and shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) The party upon whom the request is served shall respond within 15

days after the service of the request. The response shall state, with respect to each item, that inspection and related activities will be permitted as requested, unless there are objections in which case the reasons for each objection shall be stated. The party submitting the request may move for an order under § 14.26 with respect to any objection to or other failure to respond.

§ 14.26 Sanctions.

(a) A party, upon reasonable notice to other parties and all persons affected thereby, may move for an order as follows:

(1) If a deponent fails to answer a question propounded or submitted under § 14.22(c), or a corporation or other entity fails to make a designation under § 14.22(b)(3), or a party fails to answer an interrogatory submitted under § 14.24, or if a party, under § 14.25, fails to respond that inspection will be permitted or fails to permit inspection, the discovering party may move for an order compelling an answer, a designation, or inspection.

(2) An evasive or incomplete answer is to be treated as a failure to answer.

(b) If a party or an agent designated to testify fails to obey an order to permit discovery, the hearing examiner may make such orders as are just, including:

(1) That the matters regarding which the order was made or any other designated facts shall be established in accordance with the claim of the party obtaining the order;

(2) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence.

(c) If a party or an agent designated to testify fails after proper service (1) to appear for his deposition, (2) to serve answers of objections to interrogatories submitted under § 14.24, or (3) to serve a written response to a request for inspection submitted under § 14.25, the hearing examiner on motion may make such orders as are just, including those authorized under paragraphs (b)(1) and (2) of this section.

§ 14.27 Ex parte communications.

(a) Written or oral communications involving any substantive or procedural issue in a matter subject to these proceedings, directed to the hearing examiner or the Secretary, shall be deemed ex parte communications and are not to be considered part of any record or the basis for any official decision by the hearing examiner or Secretary, unless the communication is made by motion pursuant to these rules. Any such communication in writing received by the hearing examiner or Secretary shall be made public by placing it in the correspondence file of the docket which is available for public inspection. If the ex parte communication is received orally, a memorandum setting forth the substance of the conversation shall be made and filed in the correspondence section of the docket. In either case, notice of such communication will be given to the parties.

(b) The hearing examiner shall not consult any person, or party, on any fact in issue unless upon notice and opportunity for all parties to participate, or be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigation or prosecuting functions related to the case.

(c) No employee or agent of the Federal Government engaged in the investigation and prosecution of this case shall participate or advise in the rendering of the recommended or final decision, except as witness or counsel in the proceeding.

PREHEARING

§ 14.28 Prehearing conferences.

(a) Within 15 days after the Answer has been filed the hearing examiner will establish a prehearing conference date for all parties including persons or organizations whose petition requesting party status has not been ruled upon. Written notice of the prehearing conference shall be sent by the hearing examiner.

(b) At the prehearing conference the following matters, among others shall be considered:

§ 14.29

(1) Simplification and delineation of the issues to be heard; (2) stipulations; (3) limitation of number of witnesses; and exchange of witness lists; (4) procedure applicable to the proceeding; (5) offers of settlement; and (6) scheduling of the dates for exchange of exhibits. Additional prehearing conferences may be scheduled on the motion of the hearing examiner or on the motion of any party to the hearing.

HEARING

§ 14.29 Appearances.

The parties may appear in person, by counsel, or other representatives. In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present shall have an election to present his evidence in whole or such portion thereof sufficient to make a prima facie case before the hearing examiner. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the hearing examiner's proposed decision and to file exceptions to it.

§ 14.30 Purpose.

(a) The hearing is directed primarily to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. A hearing will be held in order to determine whether Respondent has failed to comply with one or more applicable requirements of Executive Order 11246, as amended, and rules, regulations, and orders thereunder. However, this shall not prevent the parties from entering into a stipulation of the facts.

(b) If all facts are stipulated, the proceedings shall go to conclusion in accordance with §§ 14.38 to 14.44.

[36 FR 5906, Mar. 31, 1971, as amended at 36 FR 7218, Apr. 16, 1971]

§ 14.31 Evidence.

Formal rules of evidence will not apply to the proceeding. Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded from the record of a hearing. Hearsay evidence shall not be inadmissible as such.

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§ 14.32 Official notice.

Whenever a party offers a public document, or part thereof, in evidence, and such document, or part thereof, has been shown by the offeror to be reasonable available to the public, such document need not be produced or marked for identification, but may be offered for official notice as a public document item by specifying the document or relevant part thereof. Official notice may also be taken of other matters, at the discretion of the hearing examiner.

§ 14.33 Testimony.

Testimony shall be given under oath by witnesses at the hearing. A witness shall be available for cross-examination, and, at the discretion of the hearing examiner, may be cross-examined without regard to the scope of direct examination as to any matter which is material to the proceeding.

§ 14.34 Objections.

Objections to evidence shall be timely, and the party making them shall briefly state the ground relied upon.

§ 14.35 Exceptions.

Exceptions to rulings of the hearing examiner are unnecessary. It is sufficient that a party, at the time the ruling of the hearing examiner is sought, makes known the action which he desires the hearing examiner to take, or his objection to an action taken, and his ground therefor.

§ 14.36 Offer of proof.

An offer of proof made in connection with an objection taken to any ruling of the hearing examiner excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony. If the excluded evidence consists of evidence in written form or consists of reference to documents, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

§ 14.37 Official transcript.

An official reporter will be designated for all hearings. The official transcripts of testimony and argument taken, together with any exhibits, briefs, or memoranda of law filed therewith, shall be filed with the hearing clerk. Transcripts may be obtained by the parties and the public from the official reporter at rates not to exceed the applicable rates fixed by the contract with the reporter. Upon notice to all parties, the hearing examiner may authorize such corrections to the transcript as are necessary to accurately reflect the testimony.

POSTHEARING PROCEDURES

§ 14.38 Proposed findings of fact and conclusions of law.

Within 30 days after the close of the hearing each party may file, or the hearing examiner may request, proposed findings of fact and conclusions of law together with supporting briefs. Such proposals and briefs shall be served on all parties and amici. Reply briefs may be submitted within 15 days after receipt of the initial proposals and briefs. Reply briefs should be filed and served on all parties and amici.

§ 14.39 Oral argument.

Within the time period for filing initial proposals and briefs, any party may move for oral argument. It is within the hearing examiner's discretion to grant the request. If the request is granted, the hearing examiner shall establish a time and place for oral argument following the filing of the briefs.

§ 14.40 Record for decision.

The hearing examiner will make his findings, conclusions, and proposed decision upon the basis of the record before him. The transcript of testimony, exhibits, and all papers, documents, and requests filed in the proceedings, except the correspondence section of the docket, shall constitute the record.

§ 14.41 Recommended determination.

The hearing examiner shall, in an expeditious manner, rule on proposed

findings and conclusions submitted by the parties; and shall make recommended findings, conclusions, and decision. These rulings and recommendations shall be certified, together with the record for decision, to the Secretary, for his decision. The rulings, recommended findings, conclusions, and decision of the hearing examiner shall be served on all parties and amici curiae to the proceedings.

§ 14.42 Exceptions to recommended determination.

Within 30 days after receipt of the recommended decision, all parties to the proceeding may file with the hearing clerk a brief in support of or as an exception to, the recommended findings, conclusions, and decision of the hearing examiner. Service of such briefs or exceptions shall be made on all parties and amici in the proceeding. Such briefs may be responded to within 15 days of their receipt by the other parties. Responses should be filed with the hearing clerk and served on all parties and amici to the proceeding.

§ 14.43 Record.

After expiration of the time for filing briefs and exceptions, the Secretary shall make a final decision on the basis of the record before him. The record includes the record for decision, the rulings, the recommended findings, conclusions and decision of the hearing examiner, and the exceptions and briefs filed subsequent to the hearing examiner's decision.

§ 14.44 Final decision.

The Secretary may affirm, modify, or set aside in whole or in part, the recommended findings, conclusions, and decision of the hearing examiner. The decision of the Secretary shall not be final without the approval of the Director, Office of Federal Contract Compliance, Department of Labor.

PART 15—SERVICE OF PROCESS

Sec.

15.1 Scope and purpose.

15.2 Definitions.

15.3 Acceptance of service of process.

§ 15.1

AUTHORITY: 5 U.S.C. 301; 15 U.S.C. 1501, 1512, 1513, 1515, and 1518; Reorganization Plan No. 5 of 1950; 44 U.S.C. 3101.

SOURCE: 46 FR 51200, Oct. 16, 1981, unless otherwise noted.

§ 15.1 Scope and purpose.

(a) This part sets forth the procedures to be followed when a summons or complaint is served on the Department, its components, its employees or on the Secretary in his official capacity.

(b) This part is intended to ensure the orderly execution of the Department's affairs and not to impede any legal proceeding.

(c) This part does not apply to subpoenas. Any employee served with a subpoena in a legal proceeding involving the United States shall immediately notify the Associate General Counsel for Litigation. 15 CFR Part 15a sets forth the procedures to be followed when an employee is served with a subpoena in a legal proceeding not involving the United States.

(d) This part does not apply to service of process made on Departmental employees personally on matters not related to their official responsibilities or to the business of the Department.

§ 15.2 Definitions.

For the purpose of this part:

(a) "Department" means the Department of Commerce.

(b) "Secretary" means the Secretary of Commerce.

(c) "Component" means the Office of the Secretary or an operating unit of the Department as defined in Department Organization Order 1-1.

(d) "Employee" means any officer or employee of the Department, including commissioned officers of the National Oceanic and Atmospheric Administration.

§ 15.3 Acceptance of service of process.

(a) Any summons or complaint to be served in person or by registered or certified mail on the Department, a component of the Department, or the Secretary or employees in their official capacities, except a summons or complaint to be served on the Commissioner of Patents and Trademarks, shall be served on the Associate Gen-

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eral Counsel for Litigation, Department of Commerce, Washington, D.C. 20230, or his designee. Any summons or complaint to be served in person or by registered or certified mail on the Commissioner of Patents and Trademark in his official capacity shall be served on the Solicitor, Patent and Trademark Office, Crystal Plaza, Virginia 20231, or his designee.

(b) Any component or employee served with a summons or complaint shall immediately notify the Associate General Counsel for Litigation or his designee and deliver the summons or complaint to him. The employee shall note on the document the date, hour and place of service and whether service was by personal delivery or by mail.

(c) When a legal proceeding is brought to hold employees personally liable in connection with actions taken in the conduct of their official responsibilities, rather than liable in their official capacities only, those employees by law are to be directly served with process. Service of process in these cases is inadequate when made upon the Associate General Counsel for Litigation or the Solicitor, or their designees. Employees sued personally for actions taken in the conduct of their official responsibilities shall immediately notify the Associate General Counsel for Litigation or his designee and deliver a copy of the summons or complaint to him. They may be represented by the Department of Justice at its discretion, as provided in 28 CFR 50.15 and 50.16 (1980).

(d) The Associate General Counsel for Litigation and the Solicitor, or their designees, when accepting service of process for an employee in his official capacity, shall endorse on the Marshall's or server's return of service form or receipt for registered or certified mail the following statement: "Service accepted in official capacity only." A rubber stamp with the above statement may be used.

(e) Upon accepting service or receiving notification of service, as provided in this section, the Associate General Counsel for Litigation and the Solicitor, shall, immediately notify the Department of Justice or United States Attorney, in order to protect the

rights of the persons and agencies involved.

PART 15a—TESTIMONY BY EMPLOYEES AND PRODUCTION OF DOCUMENTS IN CIVIL LEGAL PROCEEDINGS NOT INVOLVING THE UNITED STATES

Sec.

15a.1 Scope and purpose.

15a.2 Definitions.

15a.3 General policy.

15a.4 Testimony or production of documents.

15a.5 Responses to demands.

AUTHORITY: 5 U.S.C. 301; 15 U.S.C. 1501, 1512, 1513, 1515, and 1518; Reorganization Plan No. 5 of 1950; 44 U.S.C. 3101.

SOURCE: 46 FR 50201, Oct. 16, 1981, unless otherwise noted.

§ 15a.1 Scope and purpose.

(a) This part sets forth the procedures to be followed with respect to testimony by Department employees on official matters and production of official documents of the Department in civil legal proceedings not involving the United States.

(b) The Secretary of Commerce is by law responsible for the custody, use, and preservation of the records, papers and property held by the Department, and for the official conduct of its employees, including their appearances on official matters in civil legal proceedings not involving the United States, and is authorized to prescribe rules on those matters.

(c) The purpose of these rules is to conserve the time of Department employees for their official duties, to maintain the position of the Department as impartial among non-Federal government litigants, and to enable the Secretary and the General Counsel to determine when to authorize employees to testify and to produce documents in civil legal proceedings not involving the United States.

(d) This part is intended to ensure the orderly execution of the Department's affairs and not to impede any legal proceeding.

(e) This part in no way affects the rights and procedures governing public access to official documents pursuant to the Freedom of Informa-

tion Act or the Privacy Act. See 15 CFR Parts 4, 4b.

(f) Components of the Department may publish or leave in place supplementary rules in addition to but not inconsistent with this part.

§ 15a.2 Definitions.

For the purpose of this part:

(a) "Department" means the Department of Commerce.

(b) "Secretary" means the Secretary of Commerce.

(c) "General Counsel" means the General Counsel of the Department of Commerce or his designee.

(d) "Component" means Office of the Secretary or an operating unit of the Department as defined in Department Organization Order 1-1.

(e) "Official" means concerning the authorized business of the Department.

(f) "Legal proceeding" means any civil proceeding before a court of law, administrative board or commission, hearing officer, or other body conducting a legal or administrative proceeding or any discovery proceeding in support thereof, in which the United States is not a named party or in which the United States has not instituted the administrative investigation or administrative hearing.

(g) "Documents" means all records and papers held by the Department, including without limitation official letters, telegrams, memoranda, reports, studies, calendar and diary entries, maps, graphs, pamphlets, notes, charts, tabulations, analysis, statistical or informational accumulations, any kind of records of meetings and conversations, film impressions, magnetic tapes, and sound or mechanical reproductions.

(h) "Employee" means any officer or employee of the Department, including commissioned officers of the National Oceanic and Atmospheric Administration.

(i) "United States" means the Federal Government, its agencies, departments and employees in their official capacities.

(j) "Demand" means a request, order or subpoena for testimony or records.

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(k) "Counsel" means the Department of Justice attorney or other appropriate government counsel acting on behalf of an employee.

(l) "Court" means an entity conducting a legal proceeding.

§ 15a.3 General policy.

The Department's policy is that its documents will not be voluntarily produced and its employees will not voluntarily appear as witnesses in legal proceedings. In appropriate circumstances, the General Counsel may grant exceptions to this policy when it is determined that the disclosure of documents or the factual or expert testimony of a Departmental employee would be in the best interest of the Department or in the public interest.

§ 15a.4 Testimony or production of documents.

(a) No Department employee shall give testimony concerning official matters nor produce any official documents in any legal proceeding without the prior written authorization of the General Counsel. Notwithstanding the foregoing, Patent Examiners may testify concerning the patents they have allowed without the prior written authorization of the General Counsel pursuant to Chapter 1700 of the Patent and Trademark Office's *Manual of Patent Examining Procedure*.

(b) Certified copies of Department records will be provided upon written request and payment of applicable fees. Written requests for certification shall be addressed to the chief legal counsel for the component responsible for the records. The applicable fees include charges for certification and reproduction, the amounts of which are set out in 15 CFR 4.9(a) (3) and (5). Other reproduction costs and postage fees, as appropriate, must also be borne by the requester.

(c) A request or order for testimony by a Department employee, except a Patent Examiner as set forth in § 15a.4(a), concerning official matters or for production of official documents in a legal proceeding shall be addressed to the General Counsel, Room 5870, Department of Commerce, Washington, D.C. 20230. A subpoena

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for testimony by a Department employee, except a Patent Examiner as set forth in § 15a.4(a), concerning official matters or for production of official documents shall be served in accordance with rule 45 of the Federal Rules of Civil Procedure or applicable state procedure, with a copy of the subpoena sent to the General Counsel. Every demand shall be accompanied by an affidavit or, if that is not feasible, a statement setting forth the title of the case; the forum; the party's interest in the case; the reasons for the request; a showing that the desired testimony or documents are not reasonably available from any other source; and, if an appearance or testimony is requested, the intended use of the testimony, a general summary of the testimony desired, and a showing that no Department record could be provided and used in lieu of the testimony or other appearance requested.

(d) Any Department employee who is served with a demand in a legal proceeding shall immediately notify the General Counsel.

(e) The General Counsel may authorize and direct a Department employee to testify concerning official matters or to produce official documents in a legal proceeding when the Department has a significant interest in the legal proceeding or when such testimony or production of documents is in the public interest. In such cases costs will be assessed in accordance with existing regulations.

(f) The Secretary retains the authority to make the determination described in § 15a.4(e) in situations where statutory law or Presidential order mandate the Secretary to make the decision.

(g) The General Counsel may consult or negotiate with counsel or the party seeking such testimony or documents to (1) refine and limit the demand so that compliance is less burdensome, or (2) obtain information necessary to make the determination described in § 15a.4(e). Failure of the counsel or party seeking the testimony or the documents to cooperate in good faith to enable the General Counsel or the Secretary to make an informed determination under this part may serve

as the basis for a determination not to comply with the request demand.

§15a.5 Responses to demands.

(a) Unless authorized by a determination by the General Counsel or the Secretary under this part, a Department employee shall respectfully decline to comply with a demand in a legal proceeding.

(b) In instances where a determination has not yet been made and a response to a demand is due, or where the determination has been made not to comply with the demand, the General Counsel shall request the Department of Justice represent the employee in the legal proceedings.

(c)(1) If a response to the demand is due, and the determination required under the part has not yet been made, counsel shall provide the court with a copy of this part, inform the court that the demand has been referred to or is being referred to the General Counsel or the Secretary for his/her prompt consideration, and shall respectfully request a stay pending receipt of their instructions.

(2) If a determination has been made not to comply with the demand the General Counsel or the Secretary shall inform counsel and such other persons as circumstances may warrant. Counsel shall provide the court with a copy of this part and inform the court that the employee is prohibited from testifying or producing documents without the prior approval of the General Counsel or the Secretary.

(d) If the court declines to stay the effect of the demand in response to a request made in accordance with paragraph (c)(1) of this section pending receipt of instructions, or if the court rules that the demand must be complied with irrespective of instructions not to comply, the employee upon whom the demand has been made shall respectfully decline to comply with the demand. *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(e) A determination under this part to comply or not to comply with a demand is not an assertion or waiver of privilege, lack of relevance, technical deficiencies or any other ground for noncompliance. The Department reserves the right to oppose any

demand on any legal ground independent of its determination under this part.

PART 16—PROCEDURES FOR A VOLUNTARY CONSUMER PRODUCT INFORMATION LABELING PROGRAM

Sec.

- 16.1 Purpose.
- 16.2 Description and goal of program.
- 16.3 Definitions.
- 16.4 Finding of need to establish a specification for labeling a consumer product.
- 16.5 Development of performance information labeling specifications.
- 16.6 Establishment of fees and charges.
- 16.7 Participation in program.
- 16.8 Termination of participation.
- 16.9 Rules governing designated agents.
- 16.10 The Department of Commerce Mark.
- 16.11 Amendment or revision of a performance information labeling specification.
- 16.12 Consumer education.
- 16.13 Coordination with State and local programs.
- 16.14 Annual report.

AUTHORITY: Sec. 2, 31 Stat. 1449, as amended; sec. 1, 64 Stat. 371, (15 U.S.C. 272); Re-organization Plan No. 3 of 1946, Part VI.

SOURCE: 42 FR 26648, May 25, 1977, unless otherwise noted.

§ 16.1 Purpose.

The purpose of this part is to establish procedures under which a voluntary consumer product information labeling program administered by the Department of Commerce will function.

§ 16.2 Description and goal of program.

(a) The Department's Voluntary Consumer Product Information Labeling Program makes available to consumers, at the point of sale, information on consumer product performance in an understandable and useful form so as to facilitate accurate consumer purchasing decisions and enhance consumer satisfaction. It also educates consumers, distributors and retailers in the use of the product performance information displayed and provides manufacturers and other persons who participate in the program with an opportunity to convey to the public the particular advantages of

§ 16.3

their products. These objectives are accomplished by:

(1) Selecting or developing standardized test methods by which selected product performance characteristics can be measured;

(2) Developing labeling methods by which information concerning product performance can be transmitted in useful form to consumers at the point of sale;

(3) Encouraging manufacturers and other participants in the program voluntarily to test and label their products according to the selected or developed methods; and

(4) Encouraging consumers through various informational and educational programs to utilize the product performance information provided.

(b) The program involves voluntary labeling by enrolled participants of selected categories of consumer products with information concerning selected performance characteristics of those products. The performance characteristics selected are those that are of demonstrable importance to consumers, that consumers cannot evaluate through mere inspection of the product, and that can be measured objectively and reported understandably to consumers. The consumer products covered include those for which incorrect purchase decision can result in financial loss, dissatisfaction, or inconvenience. The program seeks to avoid the duplication of other Federal programs under which performance characteristics are labeled by exempting those performance characteristics from this program. However, where the Federal agency concerned agrees, the Department of Commerce may include information about those performance characteristics in CPILP labels if, by doing so, product comparison at the point of sale is simplified for consumers, and the complexity of product labeling is reduced for the manufacturers by enabling them to comply with the labeling requirements of other Federal agencies through participation in CPILP.

(c) For selected categories of consumer products, the program includes advertising guidelines covering situations where quantitative performance values are stated in advertising or

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where qualitative comparisons are made of the performance of different products.

[42 FR 26648, May 25, 1977, as amended at 43 FR 8255, Mar. 1, 1978]

§ 16.3 Definitions.

(a) The term "Secretary" means the Secretary of Commerce or her designee.

(b) The term "consumer" means the first person who purchases a consumer product for purposes other than resale.

(c) The term "participant" means a manufacturer, assembler or private brand labeler of consumer products or an importer of such products for resale and who participates in the program.

(d) The term "consumer product" means any article produced or distributed for sale to a consumer for the use, consumption, or enjoyment of such consumer. The term does not include products customarily intended primarily for business, commercial, or industrial use.

(e) The term "person" means an individual; a manufacturer; distributor; retailer; importer; private brand labeler; government agency at the Federal (including any agency of the Department of Commerce), State and local level; consumer organization; trade association; standards writing body; professional society; testing laboratory; or educational institution.

(f) The term "performance characteristic" means a performance characteristic of a consumer product that can be measured in an objective manner with respect to a given consumer product.

(g) The term "Specification" means a Performance Information Labeling Specification developed under § 16.5.

(h) The term "label" means printed matter affixed to or otherwise provided with a consumer product and containing all of the performance characteristics as prescribed by the Specification applicable to that product.

(i) The term "designated agent" means a person as defined in paragraph (e) of this section, who has been designated by the Secretary to carry out appropriate operational proce-

dures on behalf of more than one participant in this program in accordance with rules set out under § 16.9.

§ 16.4 Finding of need to establish a specification for labeling a consumer product.

(a) Any person may request the Secretary to find that there is a need to label a particular consumer product with information concerning one or more specific performance characteristics of that product.

(b) Such a request shall be in writing and will, to the extent practicable, include the following information:

(1) Identification of the consumer product;

(2) Extent that the product identified in paragraph (b)(1) of this section is used by the public and, if known, what the production or sales volume is of such product;

(3) Nature and extent of difficulty experienced by consumers in making informed purchase decisions because of a lack of knowledge regarding the performance characteristics of the identified consumer product;

(4) Potential or actual loss to consumers as a result of an incorrect decision based on an inadequate understanding of the performance characteristics of the identified consumer product;

(5) Extent of incidence of consumer complaints arising from or reasonably traceable to lack of knowledge regarding the performance characteristics of the identified consumer product;

(6) If known, whether there currently exist test methods which could be used to test the performance characteristics of the identified consumer product and an identification of those test methods;

(7) Reasons why it is felt, in cases where existing test methods are identified in responding to paragraph (b)(6) of this section, that such test methods are suitable for making objective measurements of the performance characteristics of the identified consumer product; and

(8) Estimated cost to participants to test and label the product.

(c) The Secretary may ask for more information to support a request made under paragraph (a) of this section if

she feels it is necessary to do so, or, if she deems it to be in the public interest, may develop such information herself as by consultation on a one-time basis with consumers, consumer organizations, and others. The Secretary shall act expeditiously on all requests and shall notify the requester of her decision in writing. If the Secretary determines that there is no need to establish a Specification for labeling the requested consumer product performance characteristics, or because of a lack of resources, she will decline to act further on the request. In those instances where the Secretary declines a request, she shall state the reasons for so declining.

(d) If the Secretary finds that a need exists to establish a Specification for labeling a consumer product under this program, she shall publish a notice in the *FEDERAL REGISTER* setting out such finding and its basis and stating that she is developing a proposed Specification in accordance with § 16.5.

§ 16.5 Development of performance information labeling Specifications.

(a) If the Secretary makes a finding of need pursuant to § 16.4, she will publish a proposed Performance Information Labeling Specification in the *FEDERAL REGISTER* with a notice giving the complete text of the proposed Specification and any other pertinent information. The notice will invite any interested person to submit written comments on the proposed Specification within 45 days after its publication in the *FEDERAL REGISTER*, unless another time limit is provided by the Secretary. Interested persons wanting to express their views in an informal hearing may do so, if within 15 days after the proposed Specification is published in the *FEDERAL REGISTER*, they request the Secretary to hold a hearing. Such informal hearings shall be held so as to give all interested persons an opportunity for the oral presentation of data, views, or arguments in addition to the opportunity to make written submissions. Notice of such hearings shall be published in the *FEDERAL REGISTER*. A transcript shall be kept of any oral presentations.

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(b) Each Specification shall as a minimum include:

(1) A description of the performance characteristics of the consumer product covered;

(2) An identification by reference of the test methods to be used in measuring the performance characteristics. The test methods, where they exist and are deemed appropriate for inclusion in the particular Specification involved, shall be those which are described in nationally-recognized voluntary standards. Where appropriate test methods do not exist, they will be developed by the Department of Commerce in cooperation with interested parties and set out in full in the Specification;

(3) A prototype label and directions for displaying the label on or with the consumer product concerned. Such directions will not prohibit the display of additional information by the participant on space adjacent to the marked boundaries of the label; and

(4) Conditions of participation.

(c) The Secretary, after consideration of all written and oral comments and other materials received in accordance with paragraph (a) of this section, shall publish in the *FEDERAL REGISTER* within 30 days after the final date for receipt of comments, or as soon as practicable thereafter, a notice either:

(1) Giving the complete text of a final Specification, including conditions of use, and stating that any prospective participant in the program desiring voluntarily to use the Department of Commerce Mark developed under § 16.10 must advise the Department of Commerce; or

(2) Stating that the proposed Specification will be further developed before final publication; or

(3) Withdrawing the proposed Specification from further consideration.

§ 16.6 Establishment of fees and charges.

(a) The Secretary in conjunction with the use of the Working Capital Fund of the National Bureau of Standards, as authorized under section 12 of the Act of March 3, 1901, as amended (15 U.S.C. 278b), for this program, shall establish fees and charges for use of the Department of Com-

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merce Label and Mark on each product. Such fees and charges shall be related to the number of units of products labeled, where appropriate. The fees and charges established by the Secretary, which may be revised by her when she deems it appropriate to do so, shall be in amounts calculated to make the operation of this program as self-sufficient as reasonable. A separate notice will be published in the *FEDERAL REGISTER* simultaneously with the notice of each proposed Specification referred to in § 16.5(a). Such notice will set out a schedule of estimated fees and charges the Secretary proposes to establish. The notice would be furnished for informational and guidance purposes only in order that the public may evaluate the proposed Specification in light of the expected fees to be charged.

(b) At such time as the Secretary publishes the notice announcing the final Specification referred to in § 16.5(c)(1), she shall simultaneously publish a separate notice in the *FEDERAL REGISTER* setting forth the final schedule of fees that will be charged participants in the program. The effective date of such final schedule of fees shall be the same as the date on which the final Specification takes effect.

(c) Revisions, if any, to the fees and charges established by the Secretary under paragraph (b) of this section shall be published in subsequent *FEDERAL REGISTER* notices and shall take effect not less than thirty (30) days after the date of publication of such notice.

(d) The establishment of fees and charges under this section may, at any time, be suspended by the Secretary for any length of time.

[42 FR 26648, May 25, 1977, as amended at 42 FR 57686, Nov. 4, 1977]

§ 16.7 Participation in program.

(a) Any manufacturer, assembler, or private brand labeler of consumer products or importer of such products for resale, desiring to participate in this program will so notify the Secretary. The notification will identify the particular Specification to be used and the prospective participant's identifi-

cation and model numbers for the products to be labeled. The notification must include a statement that if accepted as a participant in the program by the Secretary, the prospective participant will:

(1) Abide by all conditions imposed by these procedures;

(2) Abide by the conditions contained in the Specification, as prescribed in paragraph (d) of this section;

(3) Pay the fees and charges established by the Secretary; and

(4) Desist from using the Department of Commerce label and Mark if his participation is terminated under § 16.8.

(b) The Secretary shall act expeditiously on all requests to participate in the program and shall notify each prospective participant of her decision in writing. In those instances where the Secretary declines a request, she shall state the reasons for so declining.

(c) If a prospective participant seeking to participate in the program is notified by the Secretary that she proposes to deny that prospective participant the right to participate, that prospective participant shall have thirty (30) days from the receipt of such notification to request a hearing under the provisions of 5 U.S.C. 556. The Secretary's proposed denial shall become final through the issuance of a written decision to such prospective participant in the event that he does not appeal such notification by the end of the thirty (30) day period. If however, such prospective participant requests a hearing within that thirty (30) day period, the Secretary's proposed denial shall be stayed pending the outcome of the hearing held pursuant to 5 U.S.C. 556.

(d) The conditions set out in each Specification will include, but not be limited to, the following:

(1) Prior to the use of a Label, the participant will make or have made the measurements to obtain the information required for inclusion on the Label and, if requested, will forward within 30 days such measurement data to the Secretary. Such measurement data will be kept on file by the participant or his agent for two years after that product is no longer manufac-

tured unless otherwise provided in the Specification.

(2) The participant will describe the test results on the Label as prescribed in the Specification.

(3) The participant will display or arrange to display, in accordance with the appropriate Specification, the Label on or with each individual product of the type covered except for units exported from the U.S. Participants who utilized more than one brand name may participate by labeling some or all of the brand names. All models with the same brand name must be included in the program unless they are for export only.

(4) The participant agrees at his expense to comply with any reasonable request of the Secretary to have consumer products manufactured, assembled, imported, or privately brand labeled by him tested to determine that testing has been done according to the relevant Specification.

(5) Participants may reproduce the Department of Commerce Label and Mark in advertising: *Provided*, That the entire Label, complete with all information required to be displayed at the point of retail sale, is shown legibly and is not combined or associated directly with any other mark or logo.

§ 16.8 Termination of participation.

(a) The Secretary upon finding that a participant is not complying with the conditions set out in these procedures or in a Specification may terminate upon 30 days notice the participant's right to continue his participation in the program: *Provided*, That the participant shall first be given an opportunity to show cause why the participation should not be terminated.

(b) Upon receipt of a notice from the Secretary of the proposed termination, which notice shall set forth the reasons for such proposed termination, the participant shall have thirty (30) days from the date of receipt of such notification to request a hearing under the provisions of 5 U.S.C. 556. The Secretary's proposed termination shall become final through the issuance of a written decision to the participant in the event such participant

does not appeal the proposed termination within the thirty (30) day period. If, however, the participant requests a hearing within the thirty (30) day period, the Secretary's proposed termination shall be stayed pending the outcome of the hearing held pursuant to 5 U.S.C. 556.

(c) A participant may at any time terminate his participation and responsibilities under this program with regard to a specific type of product by giving written notice to the Secretary that he has discontinued use of the Department of Commerce Label and Mark for all consumer products of the type involved.

§ 16.9 Rules governing designated agents.

(a) The following rules, requirements and tasks shall be applicable with respect to the seeking of designated agent status and the performance of that role after such status has been obtained. Each person desiring to be designated as a designated agent under this program shall:

(1) Make written application to the Secretary;

(2) Provide appropriate information showing his qualifications to represent members within a given product area and that more than one prospective participant in that product area is agreeable to such representation; and

(3) Agree to service any participant in this program in the agent's cognizant product area whether or not such participant is a member of the organization or body which that agent represents.

(b) The Secretary may require a person seeking designated agent status to supply further information before granting such status to that person. The Secretary will notify each person seeking designated agent status, in writing, as expeditiously as possible after evaluating such person's application.

(c) Each person granted designated agent status shall:

(1) Provide the Secretary with a list of the participants that the designated agent services under the program. The Secretary shall also be provided an updated list as soon thereafter as may be practicable whenever there are any changes in the list;

(2) Collect fees and charges from the participants serviced under this program, consolidate such sums, and transmit those fees and charges required under § 16.6 to the Secretary;

(3) Distribute Department of Commerce Marks developed under § 16.10 or instructions for the printing of such Marks to the participants that the designated agent services under this program;

(4) Gather and consolidate such statistical information as may be required by the Secretary from individual participants serviced;

(5) Provide the Secretary with reports, including the consolidated statistical information referred to in paragraph (c)(4) of this section, as may be called for by her, relative to the activities of the participants the designated agent is servicing; and

(6) Perform any additional tasks mutually agreed upon by the designated agent and the Secretary.

(d) If a person seeking designated agent status is notified by the Secretary that she proposes to deny that person such status, that person shall have thirty (30) days from the date of receipt of such notification to request a hearing under the provisions of 5 U.S.C. 556. The Secretary's proposed denial shall become final through the issuance of a written decision to such person in the event that he does not appeal such notification by the end of that thirty (30) day period. If, however, such person requests a hearing within that thirty (30) day period, the Secretary proposed denial shall be stayed pending the outcome of the hearing held pursuant to 5 U.S.C. 556.

(e) If the Secretary finds that a designated agent has violated the terms of paragraph (c) of this section, she may, after consultations with such designated agent, notify such person that she proposes to revoke his status as a designated agent.

(f) Upon receipt of a notice from the Secretary of the proposed revocation, which notice shall set forth the reasons for such proposed revocation, the designated agent shall have thirty (30) days from the date of receipt of such notification to request a hearing under the provisions of U.S.C. 556. The Secretary's proposed revocation shall

become final through the issuance of a written decision to the designated agent in the event such designated agent does not appeal the proposed revocation within that thirty (30) day period. If, however, the designated agent requires a hearing within that thirty (30) day period, the Secretary's proposed revocation shall be stayed pending the outcome of the hearing held pursuant to 5 U.S.C. 556.

§ 16.10 The Department of Commerce Mark.

The Department of Commerce shall develop a Mark which shall be registered in the U.S. Patent and Trademark Office under 15 U.S.C. 1054 for use on each Label described in a Specification.

§ 16.11 Amendment or revision of a performance information labeling specification.

The Secretary may by order amend or revise any Specification published under § 16.5. The procedure applicable to the establishment of a Specification under § 16.5 shall be followed in amending or revising such Specification. Such amendment or revision shall not apply to consumer products manufactured prior to the effective date of the amendment or revision.

§ 16.12 Consumer education.

The Secretary, in close cooperation and coordination with interested Government agencies, appropriate trade associations and industry members, consumer organizations, and other interested persons shall carry out a program to educate consumers relative to the significance of the labeling program. Some elements of this program shall also be directed toward informing retailers and other interested groups about the program.

§ 16.13 Coordination with State and local programs.

The Secretary will establish and maintain an active program of communication with appropriate State and local government offices and agencies and will furnish and make available information and assistance that will promote uniformity in State and local programs for the labeling of perform-

ance characteristics of consumer products.

§ 16.14 Annual report.

The Secretary will prepare an annual report of activities under the program, including an evaluation of the program and a list of participants, designated agents, and types of consumer products covered.

PART 17—LICENSING OF GOVERNMENT-OWNED INVENTIONS IN THE CUSTODY OF THE DEPARTMENT OF COMMERCE

Subpart A—Licensing of Rights in Domestic Patents and Patent Applications

Sec.

17.1 Licensing rules.

Subpart B—Licensing of Rights in Foreign Patents and Patent Applications—[Reserved]

Subpart C—Appeal Procedures for Licensing Department of Commerce Patents

17.21 Purpose.

17.22 Definitions.

17.23 Authority to grant licenses.

17.24 Persons who may appeal.

17.25 Procedures.

17.26 Adjudicatory.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)), unless otherwise noted.

SOURCE: 42 FR 54415, Oct. 6, 1977, unless otherwise noted.

Subpart A—Licensing of Rights in Domestic Patents and Patent Applications

§ 17.1 Licensing rules.

(a) The Government-wide rules for the licensing of rights in domestic patents and patent applications vested in the United States of America, found at 41 CFR 101-4.1, are applicable to all such licensing activities of the Department of Commerce, subject to the following minor clarifications:

(1) The term "Government agency" as defined at 41 CFR 101-4.102(c) means the United States Department of Commerce or a designated operating unit within the Department.

(2) The term "The head of the Government agency", as defined at 41

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CFR 101-4.102(d), means the Secretary of Commerce or a designee.

Subpart B—Licensing of Rights in Foreign Patents and Patent Applications—[Reserved]

Subpart C—Appeal Procedures for Licensing Department of Commerce Patents

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 7986, Mar. 5, 1984, unless otherwise noted.

§ 17.21 Purpose.

This subpart describes the terms, conditions and procedures under which a party may appeal from a decision of the Director of the National Technical Information Service concerning the grant, denial, interpretation, modification or termination of a license of any patent in the custody of the Department of Commerce.

§ 17.22 Definitions.

(a) 41 CFR Part 101-4 shall mean the General Services Administration Final Rule concerning "Patents: Licensing of Federally Owned Inventions" which was originally published in the *FEDERAL REGISTER*, 47 FR 152, Friday, August 6, 1982 at pages 34148 through 34151.

(b) Director shall mean the Director of the National Technical Information Service, and operating agency within the U.S. Department of Commerce.

(c) Assistant Secretary means the Assistant Secretary for Productivity, Technology and Innovation who is an officer appointed by the President and confirmed by the Senate and is an official to whom the Director reports within the Department of Commerce.

§ 17.23 Authority to grant licenses.

The Director has been duly delegated authority to make any decision or determination concerning the granting, denial, interpretation, modification or termination of any license of any patent in the custody and control of the U.S. Department of Commerce. The decision and determination of the Director is final and conclusive on behalf of this Department unless the

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procedures for appeal set forth below are initiated.

§ 17.24 Persons who may appeal.

The following person(s) may appeal to the Assistant Secretary any decision or determination concerning the grant, denial, interpretation, modification or termination of a license:

(a) A person whose application for a license has been denied;

(b) A licensee whose license has been modified or terminated in whole or in part; or

(c) A person who has timely filed a written objection in response to the notice published in the *FEDERAL REGISTER* as required by 41 CFR 101-4.104-3(a)(1)(c)(i) or 101-4.104-3(b)(1)(i) and who can demonstrate to the satisfaction of the Assistant Secretary that such person may be damaged by the Director's determination.

§ 17.25 Procedures.

(a) Any appellant party(ies) who was denied a license by the Director under § 17.24(a) shall not be entitled to an adversary hearing. Such party(ies) shall file appropriate documents no later than 30 days from the receipt of the Director's decision unless the Assistant Secretary grants for good cause an extension of time. The notice, in concise and brief terms, should state the grounds for appeal and include copies of all pertinent documents. Accompanying the notice should be concise arguments as to why the Director's decision should be rejected or modified.

(b) The Assistant Secretary shall render a written opinion within 30 days of receiving all required documentation in a non-adversary appeal.

(c) Judicial review is available as the law permits.

§ 17.26 Adjudicatory.

(a) Any appellant party who seeks review of the Director's decision based upon a modification or termination of a license by the Director under § 17.24(b), or who has filed a timely objection and can demonstrate damages as provided in § 17.24(c), shall be entitled to an adversary hearing in accord with the provisions of the Ad-

Administrative Procedures Act (5 U.S.C. 554-557). A party may waive an adversary hearing by filing a written waiver with the Assistant Secretary.

(b) When an adversary hearing is required under § 17.24 (b) or (c) the Assistant Secretary shall appoint as promptly as possible an Administrative Law Judge who shall hold hearings no later than 45 days from the date of the appointment. The hearings will be conducted in conformity with the objectives of the Administrative Procedure Act. The Administrative Law Judge shall submit a written recommendation to the Assistant Secretary no later than 30 days subsequent to the hearing and/or the filing of any required written arguments or documentation.

(c) The Assistant Secretary shall render a final written decision on behalf of the Department based upon the appeal file which shall include the hearing record, exhibits, written submissions of the party(ies), and the recommendation of the Administrative Law Judge. The Assistant Secretary's decision shall include the reasons which form the basis of the determination. The final decision may uphold, overrule, or modify the Director's decision or take any action deemed appropriate.

(d) Judicial review is available as the law permits.

PART 18—ATTORNEY'S FEES AND OTHER EXPENSES

GENERAL PROVISIONS

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AUTHORITY: Title II, Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504).

SOURCE: 47 FR 13510, Mar. 31, 1982, unless otherwise noted.

GENERAL PROVISIONS

§ 18.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Department of Commerce (the word Department includes its component agencies). An eligible party may receive an award when it prevails over the Department, unless the Department's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties that are eligible for awards and the Department's proceedings that are covered by the Act. They also explain how to apply for awards, and the procedures and standards that the Department will use to make them.

§ 18.2 Definitions.

As used in this part:

(a) "Adversary adjudication" means an adjudication under 5 U.S.C. 554 in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license.

(b) "Adjudicative officer" means the official, without regard to whether the official is designated as an administrative law judge, a hearing officer or examiner, or otherwise, who presided at the adversary adjudication.

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§ 18.3 When the Act applies.

The Act applies to any adversary adjudication pending before the Department at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final agency action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final agency action occurs.

EDITORIAL NOTE: Consult the **FEDERAL REGISTER** for a document extending the effectiveness of these regulations.

§ 18.4 Proceeding covered.

(a) The Act applies to adversary adjudications conducted by the Department. These are adjudications under 5 U.S.C. 554 in which the position of this or any other agency of the United States, or any component thereof, is presented by an attorney or other representative who enters an appearance and participates in the proceedings. Any proceeding in which the Department may prescribe a lawful present or future rate is not covered by the Act. Proceedings to grant or renew licenses are also excluded but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications." The Department proceedings covered are:

(1) *Department-Wide.* (i) Title VI Civil Rights hearings conducted by the Department under 42 U.S.C. 2000d-1 and 15 CFR 8.12(d).

(ii) Handicap discrimination hearings conducted by the Department under 29 U.S.C. 794(a) and 15 CFR 8.12(d).

(2) *National Oceanic and Atmospheric Administration.* (i) Hearings conducted to contest denial of issuance or transfer, or suspension or revocation of a license, or modification of activities under a license or permit, under the Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1416(b).

(ii) Civil penalty assessments initiated under the following:

(A) Marine Mammal Protection Act of 1972, 16 U.S.C. 1375(a)

(B) Endangered Species Act of 1973, 16 U.S.C. 1540(a)

(C) Fishery Conservation and Management Act of 1976, 16 U.S.C. 1858(a)

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(D) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971(e)

(E) Marine Protection, Research, and Sanctuaries Act of 1972, 16 U.S.C. 1433

(F) Lacey Act, 18 U.S.C. 43

(G) Northern Pacific Halibut Act of 1937, 16 U.S.C. 772f

(H) Tuna Conventions Act of 1950, 16 U.S.C. 957(c)

(I) Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9152(c)

(J) Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1462(a)

(3) *International Trade Administration.* Enforcement proceedings under the AntiBoycott provisions of the Export Administration Act of 1979, 50 U.S.C. app. 2407.

(4) *Patent and Trademark Office.* Disbarment proceedings of attorneys and agents under 35 U.S.C. 32.

(b) The Department may also designate a proceeding not listed in paragraph (a) of this section as an adversary adjudication for purposes of the Act by so stating in an order initiating the proceeding or designating the matter for hearing. The Department's failure to designate a proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 18.5 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this part.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than \$1 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than \$5 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than \$5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial re-

lationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant who participated in a proceeding primarily on behalf of one or more ineligible parties is also ineligible for an award.

§ 18.6 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceedings, unless the position of the Department over which the applicant has prevailed was substantially justified. The burden of proof that an award should not be made to an eligible prevailing applicant is on the Department, which may avoid an award by showing that its position was reasonable in law and fact. No presumption arises that the Department's position was not substantially justified simply because the Department did not prevail.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 18.7 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed \$75.00 per hour. No award to compensate an expert witness may exceed the highest rate paid to a GS-15 which is currently \$24.09 per hour. However, an award may also include the reasonable expenses of the attorney, agency, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the adjudicative officer shall consider the following:

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(1) If the attorney, agent, or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceedings; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 18.8 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Department may adopt regulations providing that attorney fees may be awarded at a rate higher than the ceiling set forth in § 18.7(b) in some or all of the types of proceedings covered by this part. The Department will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with the Department a petition for rulemaking to increase the maximum rate for attorney fees. The petition should be sent to the General Counsel, Department of Commerce, 14th Street and Constitution Avenue, Room 5870, Washington, D.C. 20230. The petition should identify the rate the petitioner believes the Department should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why higher rate is warranted. The Department will respond to the petition within 60 days after it is filed, by initi-

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ating a rulemaking proceeding, denying the petition, or taking other appropriate action.

§ 18.9 Awards against other agencies.

If an applicant is entitled to an award because it prevailed over another agency of the United States that participated in a proceeding before the Department and took a position that was not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

§ 18.10 Delegations of authority.

The Secretary delegates to the General Counsel the authority to take final action on matters pertaining to the Act.

INFORMATION REQUIRED FROM APPLICANTS

§ 18.11 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Department or other agency in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed \$1 million (if an individual) or \$5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's

belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) and includes a copy of its charter or articles of incorporation.

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the adjudicative officer to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

§ 18.12 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 18.4(f) of this part) when the proceeding was initiated. Unless regulations issued by a component of the Department establish particular requirements, the exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled, "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The

motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)-(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibits shall be disposed of in accordance with the Department's established procedures under the Freedom of Information Act (15 CFR Part 4).

§ 18.13 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project, or similar matter for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 18.14 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than

§ 18.15

30 days after the Department's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy by the Department.

(c) For purposes of this rule, final disposition means the later of (1) the date on which an initial decision or other recommended disposition of the merits of the proceeding by an adjudicative officer becomes administratively final; (2) the date on which a petition for rehearing or reconsideration is disposed of; or (3) the date of final resolution of the proceeding, such as settlement or voluntary dismissal, which is not subject to a petition for rehearing or reconsideration.

PROCEDURES FOR CONSIDERING APPLICATIONS

§ 18.15 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 18.12(b) for confidential financial information.

§ 18.16 Answer to application.

(a) Within 30 calendar days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing (an extension for an additional 30 days is available as a matter of right) or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30 calendar day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer

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upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the Department's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 18.20.

§ 18.17 Reply.

Within 15 calendar days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 18.20.

§ 18.18 Comments by other parties.

Any party to a proceeding other than the applicant and the Department may file comments on an application within 30 calendar days after it is served or on an answer within 15 calendar days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 18.19 Settlements.

The applicant and Department may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 18.20 Further proceeding.

(a) Ordinarily, the determination of award will be made on the basis of the written record. However, on request of either the applicant or agency counsel,

or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submission, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 18.21 Decision.

The adjudicative officer shall issue an initial decision on the application within 30 days after completion of proceedings on the application. The initial decision of the adjudicative officer shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Department's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 18.22 Agency review.

Either the applicant or agency counsel may file a petition for review of the initial decision on the fee application, or the Department may decide to review the decision on its own initiative, in accordance with the substantive review procedures applicable to the type of proceeding involved. If neither the applicant nor agency counsel seek review and the Department does not take review on its own initiative, the initial decision on the application shall become a final decision of the Department 30 calendar days after it is issued. Whether to review a decision

is a matter within the discretion of the Department. If review is taken, the Department will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

§ 18.23 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 18.24 Payment of award.

An applicant seeking payment of an award by the Department shall submit a copy of the final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts to the General Counsel, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 5870, Washington, D.C. 20230. The Department will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

PART 19—PRODUCTIVITY, TECHNOLOGY AND INNOVATION

Subpart A—Promotion of Private Sector Industrial Technology Partnerships

Sec.

- 19.1 Purpose.
- 19.2 Definitions.
- 19.3 Assistance to industrial technology partnerships.
- 19.4 Antitrust considerations.
- 19.5 Coordination/cooperation with other Federal agencies.
- 19.6 Proprietary data.
- 19.7 Amendment of procedures.

Subpart B—Metric Conversion Policy for Federal Agencies

- 19.20 Purpose.
- 19.21 Definition.
- 19.22 General policy.
- 19.23 Guidelines.
- 19.24 Recommendations for agency organization.

AUTHORITY: 15 U.S.C. 1512 and 3710, 15 U.S.C. 205a, and DOO 10-1.

§ 19.1

Subpart A—Promotion of Private Sector Industrial Technology Partnerships

SOURCE: 48 FR 52289, Nov. 17, 1983, unless otherwise noted.

§ 19.1 Purpose.

The purpose of this part is to establish procedures under which the Department of Commerce will provide assistance for the establishment by the private sector of Industrial Technology Partnerships (as defined in § 19.2).

§ 19.2 Definitions.

(a) *Industrial Technology Partnerships (ITPs)*. As used in this subpart, ITPs include research and development limited partnerships (RDLPs) and cooperative R&D arrangements of companies, non-profit organizations, and Federal agencies or some combination thereof.

(b) *Research and Development Limited Partnership (RDLP)*. In general, the RDLP is a type of business organization to raise venture capital from the private sector to fund specified research and development projects. Additional characteristics are as follows:

(1) *Establishment in General*. An RDLP can be established by an existing firm, or by an independent entrepreneur, to finance specified research and development projects. It can effectively finance both small and large scale projects. It is established by a partnership agreement tailored to the particular projects to be funded.

(2) *Classes of Partners*. In general, a partnership agreement establishing an RDLP will provide for two classes of partners, as follows:

(i) The *General Partner* or partners provide the management for the partnership, obtain funding, make arrangements for the conduct of research, and ultimately either manufacture any new products resulting from the research and development or license out the resulting technology; and

(ii) The *Limited Partners* invest in the partnership, bear most or all of the financial risk, share in the financial success from proceeds of manufacture, royalties or other paybacks, and receive tax benefits, but exercise no

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active management role in the partnership.

§ 19.3 Assistance to industrial technology partnerships.

(a) *General*. The types of assistance available to Industrial Technology Partnerships (ITPs) are described in the following subsections. Additional assistance which is specific to Research and Development Limited Partnerships (RDLPs) is described in paragraph (f) of this section.

(b) *Workshops*. Upon request, the Secretary may hold workshops with representatives from the private sector and government in order to further the objectives of this part. Such workshops are designed to explore interest in specific potential ITPs. They will be structured to avoid antitrust problems.

(c) *Clearinghouse*. The Department's experience with Industrial Technology Partnerships, notably RDLPs, indicates that numerous potential participants in RDLPs, especially General Partners, need access to specialized information. Accordingly, the Department will develop and maintain a list of specific public and private sector specialists in such categories as venture capitalists, tax accountants, legal specialists, university and non-profit laboratories, brokers, technical and economic feasibility analysts, and proprietary information specialists (especially in patents). Persons wishing to be included in the list or wishing to receive a copy of the list should write to the following address:

Industrial Technology Partnerships Program, Herbert C. Hoover Building, Room 4816, Box B, U.S. Department of Commerce, Washington, D.C. 20230.

Inclusion on the list is voluntary, and is free of charge to all parties, as is receipt of the list. The Department of Commerce, however, makes no representation about the qualifications, experience or ability of any individual identified in these lists.

(d) *Small business*. The Department is aware of the significant contributions of technology-related small business to the economic health of the Nation. Accordingly, the Department shall identify sources of information for them on innovation services and

resources including, for example: Technologies available for licensing; markets for new technology-based products and services; financing; techniques and incentives for innovation; organizations providing feasibility testing and demonstration services; and information on production and distribution methods. This assistance may be supplemented by the list of referrals described in paragraph (c) of this section.

(e) *Patent licensing.* To assist industrial technology partnerships, the Patent Licensing Program of the National Technical Information Service (NTIS) will provide ITPs with current announcements of the availability of licenses to use government-owned technology (on an exclusive or non-exclusive basis). Write to:

David T. Mowry, Director, Center for the Utilization of Federal Technology, NTIS, 5285 Port Royal Road, Springfield, Virginia 22101.

(f) *Additional assistance for Research and Development Partnerships (RDLPs).* The Department has no funds available for direct financial support for the establishment or operation of any ITP. Anyone wishing to apply for any of the services listed below should direct their inquiry to:

Industrial Technology Partnerships Program, Herbert C. Hoover Building, Room 4816, Box B, U.S. Department of Commerce, Washington, D.C. 20230.

(1) *Introductory training.* The Department will accept a limited number of businesspersons, academicians and other persons for purposes of providing introductory training in the concept of RDLPs. Such training will be tailored to the needs of the trainee, wherever possible. Travel and other expenses of the trainees will be borne by the trainees.

(2) *Information on RDLPs.* The Department will make available information on research and development limited partnerships. A fee may be charged for the printing costs of Departmental publications.

(3) *Data bases.* The Department will provide after May, 1984 as available, technical and marketing data on specific technologies, which may be

useful to potential general partners in drafting business plans.

§ 19.4 Antitrust considerations.

The Department of Commerce will offer no opinion on the antitrust merits of the formation of any industrial technology partnership. The Secretary, upon request, may seek the Attorney General's opinion as to whether proposed joint research activities would violate any of the antitrust laws.

§ 19.5 Coordination/cooperation with other Federal agencies.

Where relevant, the Department may seek the cooperation of other Federal agencies and laboratories that may be of assistance to industrial technology partnerships.

§ 19.6 Proprietary data.

All persons making a request under this part are cautioned that data submitted to the Department may be available for dissemination under the Freedom of Information Act. The Department would, however, withhold any information it deemed proprietary on the basis of the provision of 5 U.S.C. 552(b)(4). The Department will consult with the submitter of any data requested under the Freedom of Information Act prior to the release of such information, if the data is clearly marked "Proprietary" or "Company-Confidential."

§ 19.7 Amendment of procedures.

The right to amend or withdraw these procedures is expressly reserved.

Subpart B—Metric Conversion Policy for Federal Agencies

SOURCE: 50 FR 27578, July 5, 1985, unless otherwise noted.

§ 19.20 Purpose.

This provides policy and guidelines for coordination for Federal agencies to deal with increasing use of the metric system within the Federal Government, consistent with voluntary conversion in State and local governments and in the private sector.

§ 19.21

§ 19.21 Definition.

The term "metric system", as used in this Part 19, means the International System of Units established by the General Conference on Weights and Measures in 1960, as interpreted or modified from time to time for the United States by the Secretary of Commerce under authority of the Metric Conversion Act of 1975 and the Metric Education Act of 1978. (The last revision as of the date of this publication may be found in National Bureau of Standards publication NBS LC 1132, April 19, 1982, which may be obtained from the Technical Information and Publications Division, National Bureau of Standards, Gaithersburg, Maryland 20899.)

§ 19.22 General policy.

(a) Federal agencies shall coordinate and plan for the increasing use of the Metric System in the United States consistent with the objectives of the Metric Conversion Act and metric conversion trends in the Nation. Federal agencies shall encourage and support an environment which can accommodate metrication, and when taking initiatives, will act with consideration for metrication in State and local governments and in the private sector.

(b) Each Federal agency shall be responsible for developing plans, establishing the necessary structure, and allocating sufficient resources to carry out this policy following the guidelines set out below.

§ 19.23 Guidelines.

(a) Coordinate and plan for metric conversion, taking into account the interests, views and conversion plans of other Federal agencies, State and local governments, and the private sector;

(b) Identify areas where metrication is dependent upon the agency's initiative, and take action that reflects the needs of the United States and that does not unduly restrict competition;

(c) Identify areas where metrication is dependent upon initiatives outside

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the agency that affect the agency, and take appropriate internal action;

(d) Assist in resolving metric-related problems brought to the attention of the agency that are associated with agency actions, programs and responsibilities.

(e) Identify measurement-sensitive agency policies and procedures and ensure that regulations, standards, specifications, procurement policies and appropriate legislative proposals do not impose barriers to voluntary use of the metric system;

(f) Consider the cost effects of metric use in agency policies, programs and actions;

(g) Provide for full public involvement and timely information about significant metrication policies, programs and actions;

(h) Consider, in procurement, acceptance without prejudice of metric goods and services when they are offered at competitive cost and meet the needs of the Government; and

(i) Consider particularly the effects of agency metric policies and practices on small business.

§ 19.24 Recommendations for agency organization.

Each agency should:

(a) Participate as appropriate in the Interagency Committee on Metric Policy (ICMP), which coordinates and provides policy guidance regarding the U.S. Government's efforts in accommodating voluntary metric conversion.

(b) Designate a senior official to be responsible for intra-agency metric policy and to represent the agency on the ICMP.

(c) Designate such official as may be appropriate to represent the agency in the Metrication Operating Committee (MOC), a committee subordinate to the ICMP.

(d) Maintain liaison with private sector groups involved in planning for or coordinating voluntary use of the metric system.

(e) Provide for adequate employee awareness and understanding of agency metric policies and programs.

CHAPTER 1—BUREAU OF THE CENSUS

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PART 30—FOREIGN TRADE STATISTICS

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AUTHORITY: Secs. 30.1 to 30.95 issued under R.S. 161; (5 U.S.C. 301); Reorganization Plan No. 5 of 1950, 15 FR 3174, 64 Stat. 1263; Department of Commerce Order No. 85, June 21, 1962, 27 FR 6397. Interpret or apply 76 Stat. 951, 77A Stat. (13 U.S.C. 301-307; 19 U.S.C. 1202, 1484(e)), unless otherwise noted.

SOURCE: 41 FR 9134, Mar. 3, 1976, unless otherwise noted.

NOTE: The term "Customs Director" or "District Director of Customs" as used in this Part 30 means the Regional Commissioner of Customs if the transaction is at the port of New York City; the district director of customs if at the headquarters port of a customs district other than New York City; and the customs officer in charge of the port if at a nonheadquarters port.

Subpart A—General Requirements—Exporters

§ 30.1 General statement of requirement for Shipper's Export Declarations.

(a) Shipper's Export Declarations shall be filed by exporters or their agents in accordance with the definitions, specifications, and requirements of these regulations for all commodities, gold and silver, except as specifically exempted herein, shipped as follows:

(1) To foreign countries or areas including Trust Territories under U.S. administration, with the exception of the Northern Mariana Islands, and to Foreign Trade Zones located in foreign countries or areas from any of the following:

(i) The United States, including the 50 States and the District of Columbia.

(ii) Puerto Rico.

(iii) Foreign Trade Zones in the United States or Puerto Rico.

(iv) The Virgin Islands of the United States.

(2) Between nonforeign areas as specified below then:¹

¹Shipper's Export Declarations are not required for shipments from the United States or Puerto Rico to the United States Possessions, except to the Virgin Islands of

(i) To Puerto Rico from the United States.

(ii) To the United States from Puerto Rico.

(iii) To the Virgin Islands of the United States from the United States or Puerto Rico.

(b) Shipper's Export Declarations shall be filed for merchandise moving as described above regardless of the method of transportation. Instructions for the filing of Shipper's Export Declarations for vessels, aircraft, railway cars, etc., when sold foreign appear in § 30.33. Exemptions from these requirements and exceptions to some of the provisions of these regulations for particular types of transactions will be found in Subparts C and D of this part.

[41 FR 9134, Mar. 3, 1976, as amended at 41 FR 29374, July 16, 1976; 41 FR 42645, Sept. 28, 1976; 50 FR 13017, Apr. 2, 1985]

§ 30.2 Related export control requirements.

(a) Under the provisions of the Export Administration Regulations of the Office of Export Administration in the International Trade Administration, U.S. Department of Commerce (15 CFR Parts 368-399),² Shipper's Export Declarations are also required for shipments of Merchandise from U.S. Possessions to foreign countries or areas. In these regulations, the term U.S. Possessions includes the Virgin Islands of the United States, Guam Island, American Samoa, Wake Island, Midway Island, and Canton and Enderbury Islands.

(b) For all shipments to foreign countries or areas, the Shipper's Export Declaration is an export control document. In preparing and filing export declarations for shipments to foreign countries and areas, therefore, the shipper must comply with all pertinent export control regulations as well as the requirements of the statis-

the United States, or from a U.S. Possession destined to the United States, Puerto Rico, or another U.S. Possession.

²See also the Export Administration Regulations of the Office of Export Administration, which may be purchased from the Government Printing Office or Department of Commerce District Offices.

tical regulations of this part. For convenience, a few provisions of the Export Administration Regulations and of the Customs regulations closely related to statistical requirements have been incorporated in these regulations. Information concerning export control regulations and information concerning agencies other than the Department of Commerce exercising export control authority for particular types of commodities may be obtained from the Office of Export Administration, International Trade Administration, Washington, D.C. 20230, or from Department of Commerce District Offices.

(13 U.S.C. 302; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950, Department of Commerce Order No. 35-2A, August 4, 1975, 40 FR 42765)

[41 FR 9134, Mar. 3, 1976, as amended at 47 FR 7213, Feb. 18, 1982]

§ 30.3 Shipper's Export Declaration forms.

(a) Official forms, or privately printed forms conforming in every respect to the official forms, shall be used in complying with requirements for Shipper's Export Declarations as follows:

(1) Except for shipments for which the Shipper's Export Declaration for In transit Goods (Commerce Form 7513) is required as specified below, the Shipper's Export Declaration shall be prepared on Commerce Form 7525-V or on Commerce Form 7525-V-Alternate (Intermodal). The arrangement of Form 7525-V-Alternate (Intermodal) conforms to and is designed for simultaneous preparation with various other shipping documents commonly used, such as the dock receipt, short form bill of lading, etc. Form 7525-V-Alternate (Intermodal) is acceptable in lieu of Form 7525-V without limitation.

(2) For merchandise shipped in transit through the United States, Puerto Rico, or the Virgin Islands of the United States from one foreign country or area to another, including such merchandise destined from one foreign place to another and transshipped in ports of the United States, Puerto Rico, or the Virgin Islands of the United States, and for foreign merchandise exported from General Order Warehouses, the Shipper's

Export Declaration for Intransit Goods (Commerce Form 7513) shall be filed. Form 7513 shall also be filed for merchandise subject to government inspection, examination, or permit arriving from a foreign country which is rejected and exported. (Although Form 7513 provides that it is to be used for foreign merchandise, it should be used also for U.S. merchandise which after having been exported has been returned to or through the United States and is again being exported under any of the conditions described in this paragraph. Except for rejected merchandise, Form 7513 is not to be used for the reexportation of goods for which entry has been made on Customs Forms 7501 or 7502.)

(b) The Shipper's Export Declaration and the Continuation Sheet³ to the Shipper's Export Declaration (both forms designated Commerce Form 7525-V), and the Shipper's Export Declaration for In-transit Goods (Commerce Form 7513) may be purchased for a nominal price from Customs Directors, Department of Commerce District Offices, and the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or they may be privately printed. Supplies of the Alternate Intermodal Shipper's Export Declaration and the Continuation Sheet to the Alternate Intermodal Shipper's Export Declaration are not available from Government sales offices but must be privately printed. Sample official Alternate Intermodal Forms and their Continuation Sheets may be obtained from the Foreign Trade Division, Bureau of the Census, Washington, D.C. 20233. Privately printed Shipper's Export Declaration forms must conform strictly to the respective official form in size, wording, color, quality (weight of paper stock), and arrangement, including the Office of Management and Budget approval number printed in the upper-right hand corner of the face of form. The quality (weight) of paper stock used in printing the Shipper's Export Declaration form is not less than 16 nor more

³See § 30.10 for instructions as to use of the continuations Sheet.

than 20 pounds commercial substance. Occasional shippers may obtain copies of Shipper's Export Declarations free of charge from local Customs Directors, Post Offices, and Department of Commerce District Offices.

(13 U.S.C. 302; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950, Department of Commerce Order No. 35-2A, August 4, 1975, 40 FR 42765)

[41 FR 9134, Mar. 3, 1976, as amended at 47 FR 29829, July 9, 1982; 50 FR 23402, June 4, 1985]

§ 30.4 Preparation and signature of Shipper's Export Declarations.

(a) The Shipper's Export Declaration shall be prepared and signed by the shipper, owner, or consignor, or his properly authorized agent. For shipments to foreign countries, if the Shipper's Export Declaration is prepared by an agent his authority to sign such declaration shall be in the form of a properly executed power of attorney, signed by the shipper, owner, or consignor, or in the less formal written authorization printed on the export declaration. The power-of-attorney shall be on file in the agent's office and available for inspection on demand. In every event the data required in the Shipper's Export Declaration shall be complete and correct and shall be based on personal knowledge of the facts stated, or on invoices or information furnished by the principal. Exporters who authorize the preparation of their export declarations by an agent shall provide the agent with information for this purpose which will in every respect meet the specifications in § 30.7. Particular attention is called to the fact that invoices and other commercial documents furnished to the agent for other purposes may not necessarily contain all of the particular types of information needed for the preparation of the export declaration, and special arrangements should be made so that the information needed for the export declaration is noted upon or accompanies the commercial documents furnished to the agent, if he is to prepare the Shipper's Export Declaration.

(b) Shipper's Export Declarations shall be typewritten or prepared in ink or other permanent medium (except

indelible pencil). The use of ditto, hectograph, or other duplicating process, as well as the overprinting of selected items of information, is acceptable.

(c) All copies of the Shipper's Export Declaration shall contain all of the information called for in the signature space as to name of firm, address, name of signer, capacity of signer, etc. The original Shipper's Export Declaration shall be signed in ink, but signature of other copies is not required. The use of signature stamps is acceptable as signature in ink. A duly signed legible carbon or other copy of the export declaration is acceptable as an "original" of the Shipper's Export Declaration.

§ 30.5 Number of copies of Shipper's Export Declaration required.

(a) Except as provided elsewhere in these regulations the Shipper's Export Declaration shall be delivered to the carrier or postmasters, as specified in §§ 30.12 and 30.15, in the following number of copies:

(1) In duplicate for shipments, except by mail, destined to all foreign countries except Canada.

(2) One copy only for shipments to Canada and nonforeign areas.

(3) One copy only for mail shipments to all destinations.

(b) In addition to the standard requirements set forth in paragraph (a) of this section, additional copies of Shipper's Export Declarations may be required for export control purposes by the regulations of the Office of Export Administration or other Government agencies or in particular circumstances by the Customs Director or by the postmaster.

§ 30.6 Requirements as to separate Shipper's Export Declarations.

Except as specifically provided in Subpart C, a separate Shipper's Export Declaration (in the required number of copies—see § 30.5) is required for each shipment (consisting of one or more kinds of merchandise) from one consignor to one consignee on a single carrier. In addition, more than one declaration is required for an individual shipment as follows:

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(a) For consignments by rail, truck, or other vehicle, requiring more than one rail car, truck, or other vehicle, a separate export declaration is required for the merchandise carried in each such rail car, truck, or other vehicle. However, Customs Directors are authorized to waive this requirement where multiple car shipments are made under a single bill of lading or other loading document and are cleared simultaneously.

(b) Commodities requiring a validated export license shall not be reported on the same export declaration with commodities moving under general license.

§ 30.7 Information required on Shipper's Export Declarations.

The following information shall be furnished in the appropriate spaces provided on the Shipper's Export Declaration and shall conform to the requirements set forth in this section. (See § 30.92 for information as to the statistical classification Schedules B, C—E, and D referred to in this section. Also, see § 30.8 for information required on Form 7513 in addition to these requirements.)

(a) *Port of export.* The name of the U.S. Customs port of exportation shall be entered in terms of Schedule D, *Classification of Customs Districts and Ports*. (See § 30.20(c) for definition of port of exportation.) For shipments by mail, the name of the Post Office where the package is mailed shall be inserted in the space for U.S. port of export.

(b) *Method of transportation.* Except on Commerce Form 7513, the method of transportation by which the goods are exported (or shipped to a nonforeign area where the declaration covers such a shipment) i.e., vessel (including ferry), air, or other, shall be indicated by check mark in the appropriate space. For shipments by means of transportation other than vessel or air the specific method of transportation (rail, truck, pipeline, etc.) used should be entered. "Other" should be checked for exported aircraft being flown away, vessels exported under their own power or afloat, or for other vehicles exported other than aboard another carrier, and the manner in

which exported should be specified; e.g., "flown away," "in tow," etc.

(c) *Exporting carrier.* Information concerning the specific exporting carrier shall be reported as follows:

(1) For shipments by vessel, the name and flag nationality of the ship and the number or name of the pier at which the goods were laden shall be shown.

(2) For shipments by air, the name of the airline shall be reported.

(3) For shipments by other than vessel or air, the carrier shall be identified by name and number or other available designation.

In all cases, the information shall be furnished as to the carrier which transports the merchandise to a foreign country or to an ultimate destination in a nonforeign area, and not as to a different carrier which may have transported the goods to the seaport, airport, or border port of export for final shipment.

(d) *Name of exporter and exporter's Employer Identification Number.* (1) *Name of exporter.* In general, the exporter named on the Shipper's Export Declaration shall be the principal or seller in the export transaction. For exports moving under validated license, the exporter named on the Shipper's Export Declaration shall be the licensee named on the validated export license. The address of the exporter (number, street, place, state) shall also be shown. (On Form 7513, if an authorized agent is representing the exporter, the name of the exporter as defined herein should be shown on the line labeled "For account of" where "Principal or seller" is indicated below the line on the form.)

(2) *Exporter's Employer Identification Number.* Exporters (or their agents shall report the exporter's Internal Revenue Service Employer Identification Number (EIN). If no Internal Revenue Service EIN has been assigned, the exporter's Social Security Number (SSN), preceded by the symbol "SS," should be reported. The exporter's SSN shall be reported if, and only if, no Internal Revenue EIN has been assigned to the exporter. If neither an Internal Revenue Service EIN nor an SSN has been assigned, for

example, in case of a foreign entity as the exporter, the EIN or SSN reporting requirement does not apply.

(e) *Agent of exporter (forwarding agent).* The name and address of the duly authorized forwarding agent (if any) of the exporter shall be stated. (See § 30.4.) (On Form 7513, the information as to agent (if any) should be shown on the line labeled "Exporter," where "Actual shipper or agent" is indicated below the line on the form.)

(f) *Ultimate consignee.* The name and address (place, country) of the ultimate consignee whether by sale in the United States or abroad or by consignment shall be stated on the export declaration. For exports to foreign countries, the ultimate consignee shall be the same person so designated in the validated export license or authorized to be ultimate consignee under the applicable general license in conformity with Export Administration Regulations.

(g) *Intermediate consignee.* The name and address of the intermediate consignee (if any) shall be stated. For exports to foreign countries, the intermediate consignee shall be the person named as such in the validated export license or authorized to act as such under the applicable general license and in conformity with the Export Administration Regulations. If there is no intermediate consignee, the word "none" shall be entered on the Shipper's Export Declaration. (On Form 7513 the name and address of the intermediate consignee (if any) in a foreign country must be shown below the description of commodities across columns 1 through 6.)

(h) *Foreign port of unloading.* For shipments by vessel and by air the foreign port and country of unloading (i.e., the foreign port and country at which the merchandise will be unladen from the exporting carrier) shall be shown on the Shipper's Export Declaration in addition to the country of ultimate destination. The reporting of "optional" ports of unloading is not permissible except as provided in the Export Administration Regulations.⁴

⁴See Export Administration Regulations. (See footnote 2 to § 30.2)

Where optional ports of unloading are named on the Shipper's Export Declaration under the permissible conditions, a photocopy, carbon, or other legible copy of the originally filed Shipper's Export Declaration indicating the actual port of unloading shall be filed by the exporter or his agent with the Customs Director as soon as the actual port of unloading is known to the exporter. (See § 30.16 of these regulations.) Information as to port of unloading is required for shipments by vessel and air only.

(i) *Country of destination.* Country of destination shall be reported on the Shipper's Export Declaration in terms of the names designated in Schedule C-E, *Classification of Country and Territory Designations for U.S. Export Statistics*, as follows:

(1) For shipments under validated export licenses, the country of ultimate destination shown on the export declaration shall conform to the country of ultimate destination as shown on the license.

(2) For shipments not moving under validated export license, the country of ultimate destination as known to the exporter at the time of exportation shall be shown on the export declaration. "Country of ultimate destination" means the country in which the goods are to be consumed or further processed or manufactured. The country to which the goods are being shipped is not the country of ultimate destination for purposes of preparing the Shipper's Export Declaration if the exporter has knowledge at the time the goods leave the United States that they are intended for reexport or transshipment in their present form to another known country. For goods shipped to Canada, Panama, Hong Kong, Belgium or The Netherlands for example, special care should be exercised before reporting these countries as the ultimate destination, since these are countries through which merchandise from the United States is frequently transshipped. If the shipper does not know the ultimate destination of the goods, the country of destination to be shown on the export declaration is the last country, as known to the exporter at the time of shipment from the United States, to

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which the goods are to be shipped in their present form. (For instructions as to the reporting of country of destination for vessels sold or transferred from the United States to foreign ownership, see § 30.33.)

(j) *Marks and numbers.* For purposes of identification of the export declaration with the merchandise it covers, the marks, numbers, or other identification shown on the packages should be inserted. This information is not required for shipments by mail inasmuch as the declaration is presented to the Postmaster with the packages being mailed.

(k) *Number and kind of packages.* The number and kind of packages (i.e., boxes, barrels, baskets, bales, etc.) shall be stated.

(l) *Description of commodities and Schedule B number.* The correct commodity number as provided in Schedule B, *Statistical Classification of Domestic and Foreign Commodities Exported from the United States*, shall be entered in the space provided on the Shipper's Export Declaration form, and a description of the merchandise shall be supplied in the "Description of Commodities" column in sufficient detail to permit the verification of the Schedule B commodity number. The name of the commodity, in terms which can be identified or associated with the language used in Schedule B (usually the commercial name of the commodity), and any and all characteristics of the commodity which distinguish it from commodities of the same name covered by other Schedule B classifications shall be clearly and fully stated. Careful reference to the Schedule B classification scheme for related commodities as well as for the commodity being shipped is necessary in order to establish which particular characteristics must be stated in the description to permit verification of the correct Schedule B commodity number and to eliminate any question that some other commodity number might apply. A description of commodities in the kind of detail specified above is a separate requirement, and the furnishing of the correct Schedule B commodity number does not relieve the exporter of furnishing, in addition, a complete and accurate commodity

description in accordance with this requirement. If the shipment is moving under a validated license, the description shown on the export declaration shall conform with that shown on the validated export license. However, where the description on the license does not state all of the characteristics of the commodity which are needed to completely verify the commodity number, as described above, the missing characteristics, as well as the description shown on the license, shall be stated in the commodity description on the Shipper's Export Declaration.

(m) *Export license number and expiration date (or general license symbol).* For exports to foreign countries the export license number and expiration date, or the general license symbol shall be shown below the description of the commodity.

(n) *Net quantity.* Where a unit of quantity is specified in Schedule B for the commodity number in which the item is classified, net quantity is required to be reported in the specified unit, and the unit in which reported should be indicated on the declaration following the net quantity figure. Where the unit of quantity specified in Schedule B is "No." (number), "Each" or the abbreviation "Ea." may be indicated on the declaration as the unit of quantity. If no unit of quantity is specified in Schedule B for a numbered classification, but a validated export license for the item specifies a unit of quantity, the net quantity shall be reported on the declaration in terms of the unit of quantity specified in the validated license. If neither Schedule B nor an applicable validated license specifies a unit of quantity for the item, net quantity is not required to be reported, and an "X" should be entered in the "net quantity" column on the Shipper's Export Declaration. Where Schedule B calls for two units of quantity, net quantity shall be reported in terms of both units. Where the specified unit is in terms of weight (ounces, pounds, etc.) the net quantity should reflect the net weight, exclusive of the weight of barrels, boxes, or other bulky coverings, and exclusive of salt or pickle in the case of salted or pickled fish or meats.

Note, however. That for a few commodities where "content lb.," "dry weight," or some similar weight unit is specified in Schedule B, the net quantity to be reported on the Shipper's Export Declaration may be less than the net weight. In the expression of net quantities, fractions of one-half unit or upward will be counted as a whole unit, and fractions of less than one-half unit will be ignored, except that where the total net quantity is less than one-half of the unit prescribed for the commodity in Schedule B "Less than one-half (unit)" should be reported. (For example, where the unit for a given commodity is in terms of "M board feet," a net quantity of 8,400 board feet would be reported as "8 M bd. ft." and a net quantity of 900 board feet would be reported as "1 M bd. ft."; however, a total net quantity of 450 board feet should not be ignored but should be reported as "less than one-half M bd. ft.")

(o) *Gross (shipping) weight.* In addition to specifying the net quantity in the units required by Schedule B, the gross shipping weight in pounds, including the weight of containers, shall be shown for all shipments by vessel and air. However, for containerized cargo in lift vans, cargo vans, or similar substantial outer containers, the weight of such containers should not be included in the gross weight of the commodities. If gross shipping weight information is not available for individual Schedule B items for the reason that commodities covered by more than one Schedule B number are contained in the same shipping container, approximate shipping weights, estimated as accurately as is practicable, may be shown on the Shipper's Export Declarations for each Schedule B item in the container. The total of the estimated weights must equal the actual shipping weight of the entire container or containers and contents. Gross shipping weight is not required for shipments by mail or for shipments by methods of transportation other than vessel or air.

(p) "D" (*Domestic*) or "F" (*Foreign*).

(1) The export declaration covering exports to foreign countries shall show foreign goods separately from goods of domestic production. Exports of for-

eign merchandise include those commodities which are the growth, produce, or manufacture of foreign countries which entered the United States, including U.S. Foreign Trade Zones, as imports and which at the time of exportation have undergone no change in form or condition or enhancement in value by further manufacture in the United States, including U.S. Foreign Trade Zones, Puerto Rico, or U.S. Possessions.

(2) Exports of domestic merchandise include those commodities which are the growth, produce, or manufacture of the United States, including U.S. Foreign Trade Zones, Puerto Rico, or U.S. Possessions (including commodities incorporating foreign components), and those articles of foreign origin which have been enhanced in value or changed from the form in which imported by further manufacture or processing in the United States, including U.S. Foreign Trade Zones, Puerto Rico, or U.S. Possessions.

(3) The above distinction between domestic and foreign merchandise is intended only for use in reporting on the Shipper's Export Declaration and is intended for statistical purposes only.

(4) On the Shipper's Export Declaration in the column headed "Specify 'D' or 'F'", domestic merchandise shall be identified by the designation "D" and foreign merchandise shall be identified by the designation "F." On the Shipper's Export Declaration for In-Transit Goods, Form 7513, one of the following statements, whichever is appropriate, shall be shown across the body of the form within columns 1 through 6:

(i) For in-transit shipments of domestic (U.S.) merchandise, "The merchandise described herein is of the growth, production or manufacture of the United States;" and (ii) for in-transit shipments of foreign merchandise, "The merchandise described herein is of foreign origin."

(q) *Value.* (1) In general, the value to be reported on the Shipper's Export Declaration shall be the value at U.S. port of export (selling price or cost if not sold, including inland freight, insurance, and other charges to U.S.

port of export) (nearest whole dollar; omit cents figures). Port of Export (Selling price or cost if not sold, including inland freight, insurance and other charges to U.S. port of export) (Nearest whole dollar; omit cents figures)." "Selling price" for goods exported pursuant to sale is the exporter's price to his customer net of any unconditional discounts from list price, but without deducting any discounts which are conditional upon a particular act or performance on the part of the customer. Commissions to be paid by a U.S. exporter to his agent abroad, or to be deducted from the selling price by the exporter's agent abroad should be excluded. For goods shipped on consignment without a sale actually having been made at the time of export, the "selling price" to be reported on the Shipper's Export Declaration is the market value at the time of export at the United States port from which exported.

(2) The value reported on the Shipper's Export Declaration shall exclude: The cost of loading on the exporting vessel, aircraft, car or vehicle at the port of exportation; freight, insurance, and any other charges or transportation costs beyond the port of export; and any duties, taxes, or other assessments imposed by foreign countries. The value reported shall include inland or domestic freight or other charges to the seaport, airport, or border port of exportation.

(3) The value to be reported as defined above is (or is equivalent to) an f.a.s. (Free alongside ship) value. Therefore, where goods are sold f.o.b. a U.S. point other than the port of exportation, freight, insurance, and other costs to the border, sea, or airport of exportation shall be added to the selling price (as defined above) for purposes of reporting value on the Shipper's Export Declaration. If the actual amount of such domestic costs is not available, an estimate of the domestic costs shall be added. Where goods are sold at a "delivered" price, c.i.f. foreign destination, the cost of loading on the exporting carrier at the port of exportation, if any, and freight, insurance, and other costs beyond the port of exportation should be subtracted from the price for pur-

poses of reporting value on the Shipper's Export Declaration. If the actual amount of such costs is not available, an estimate of the costs should be subtracted. Costs added to or subtracted from the selling price in accordance with the above instructions should not be itemized or shown separately on the Shipper's Export Declaration, but the value reported should be the value after the making of such adjustments, where they are required to arrive at "value at U.S. port of export." In the expression of values in export declarations, fractions of a dollar less than 50 cents should be ignored, and fractions of 50 cents or upward should be counted as \$1.

(4) For definitions of the value to be shown on the Shipper's Export Declaration for special types of transactions where the commodities are not being exported pursuant to commercial sales, or where subsidies, government financing or participation, or other unusual conditions are involved, see § 30.30.

(r) *Date of exportation.* Information as to date of exportation is not required to be reported for shipments by vessel or by mail. For other shipments, the date of departure (or date of clearance, if date of departure is not known) shall be shown on the Shipper's Export Declaration as the date of exportation.

(s) *Designation of agent and signature.* For information regarding the use of the space provided on Form 7525-V and 7525-V-Alternate (Intermodal) for authorization of agent, and for requirements as to signature, see § 30.4.

(t) *Point (state) of origin or Foreign Trade Zone number.* (Not required for in-transit merchandise documented on Form 7513.) (1) The state in which the merchandise actually begins its movement in international trade; that is, the state in which the merchandise actually starts its journey to the port of export. For example, a Shipper's Export Declaration covering merchandise laden aboard a truck at a warehouse in Georgia for transport to Florida for loading onto a vessel for export to a foreign country shall show Georgia as the state of origin. This may not be the state where the merchandise

was produced, mined, or grown, or necessarily the state where the exporter is located. The state designation to be shown shall be the U.S. Postal Service's standard two-letter state abbreviation.

(2) For shipments of multistate origin, reported on a single SED, report state of the commodity of the greatest value or, if such information is not known at the time of export, the state in which the commodities are consolidated for export.

(3) For merchandise exported from a U.S. Foreign Trade Zone, the letters "FTZ" followed by the Foreign Trade Zone number shall be reported.

(u) *Containerized.* (Not required for in-transit merchandise documented on Form 7513.) This information is required to be shown for vessel shipments only. A containerized shipment is one transported in any size van-type container such as 8' x 8' x 20' or 8' x 8' x 40'. Cargo originally booked as *containerized cargo* as well as that placed in containers at the vessel operator's option shall be included.

(v) *Parties to transaction.* (Not required for in-transit merchandise documented on Form 7513.) An export between related parties is one—

(1) From a U.S. person (U.S. exporter) to a foreign business enterprise (foreign consignee) in which at anytime during the fiscal year, the U.S. person owned or controlled, directly or indirectly, 10 percent or more of the voting securities of the foreign enterprise, if an incorporated business enterprise; or an equivalent interest, if an unincorporated business enterprise, including a branch; or

(2) From a U.S. business enterprise (U.S. exporter) to a foreign person (foreign consignee) that, at anytime during the fiscal year, owned or controlled, directly or indirectly, 10 percent or more of the voting securities of the U.S. business enterprise, if an incorporated business enterprise; or an equivalent interest if an unincorporated business enterprise, including a branch.

(13 U.S.C. 302; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950; Department of Commerce Circular Order No. 35-2 A, Aug. 4, 1975, 40 FR 42765)

[41 FR 9134, Mar. 3, 1976, as amended at 42 FR 59839, Nov. 22, 1977; 43 FR 50675, Oct. 31, 1978; 43 FR 56030, Nov. 30, 1978; 44 FR 1971, Jan. 8, 1979; 44 FR 52174, Sept. 7, 1979; 45 FR 29567, May 5, 1980; 47 FR 29829, July 9, 1982; 50 FR 23402, June 4, 1985]

§ 30.8 Additional information required on Shipper's Export Declaration for In-Transit Goods (Form 7513).

In addition to the information required under § 30.7, the following information shall be shown on the Shipper's Export Declaration for In-Transit Goods, Form 7513:

(a) *U.S. port of arrival.* The U.S. port at which the merchandise covered by the declaration arrived from a foreign country shall be shown.

(b) *Country from which shipped.* The name of the foreign country where the goods were loaded on the carrier which transported the merchandise to the United States from a foreign country shall be indicated.

(c) *Date of arrival.* The date on which the merchandise arrived in the United States shall be entered.

(d) *Country of origin.* The name of the country of origin as defined in § 30.70(f) shall be indicated.

§ 30.9 Requirements for separation and alignment of items on Shipper's Export Declaration.

For each Schedule B classification (see § 30.7(l)) for which merchandise is included in the shipment, a separate item shall be shown on the Shipper's Export Declaration and the separate description of commodities, shipping weight, "D" or "F" designation, Schedule B commodity number, net quantity and value for the item shall be correctly aligned horizontally, and clearly distinguishable from information applying to other Schedule B items on the same declaration. However, where merchandise covered by a single Schedule B classification is moving under more than one general license, under more than one validated export license, or under a validated export license which shows two or more listings for the same Schedule B number, a separate item shall be shown on the Shipper's Export Declaration for each license or for each listing on the li-

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cense.⁵ For merchandise moving under validated license, information required by export control regulations as to export license number and expiration date, and information as to whether the export is a partial or complete shipment against the license, shall be shown immediately below the corresponding description of commodities on the Shipper's Export Declaration. Where two or more items are classified under the same Schedule B number and moving under the same general license, or where no license is required, the quantities, values and shipping weights of such invoice items, wherever practical, should be combined and the information shown on a single horizontal line of the Shipper's Export Declaration. Commodities of U.S. manufacture incorporating foreign components shall be reported under the Schedule B number for the exported commodity, and a separate item shall not be shown for the imported components. If the exporter desires to record the imported components separately on the export declaration for purposes of identification with a temporary import bond, a notation may be made in the "Description of Commodities" column as to the imported components that have been incorporated in the exported commodity. In the preparation of the export declaration, shippers shall conform to the line spacing on all copies.

(41 FDR 9134, Mar. 3, 1976, as amended at 50 FR 23403, June 4, 1985)

§ 30.10 Continuation sheets for Shipper's Export Declaration.

When more horizontal lines than the number provided on the Shipper's Export Declaration form are required to list all of the merchandise covered by the declaration, Continuation Sheets should be utilized.⁶ In lieu of official Continuation Sheets, additional copies of the Shipper's Export Declaration form with no portion torn off or removed, may be used as continuation sheets. All continuation sheets

⁵ See § 30.6 for prohibition against reporting general license commodities on the same Shipper's Export Declaration with commodities moving under a validated license.

⁶ See § 30.3(b).

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shall be numbered in proper sequence and securely stapled to the first sheet, which must be the export declaration itself. Each continuation sheet shall show the Customs port of exportation and the country of ultimate destination for the shipment. The following statement with the blank filled in as appropriate shall be inserted on the last line of the description column of the Shipper's Export Declaration itself:

"This declaration consists of this sheet and No. ——— continuation sheets."

(41 FDR 9134, Mar. 3, 1976, as amended at 50 FR 23403, June 4, 1985)

§ 30.11 Authority to require production of documents.

For purposes of verifying the completeness and accuracy of the information reported as required under §§ 30.7 and 30.8, and for other purposes under the regulations in this part, Customs is authorized to require the owners and operators of exporting carriers, as well as the exporters or their agents, either at the time of exportation or within a period of 3 years subsequent thereto, to produce for inspection or copying shipping documents, invoices, orders, packing lists, correspondence, as well as any other relevant documents and to furnish other information bearing upon a particular exportation. The Bureau of the Census is similarly authorized to require the production of such documents. Customs shall refuse to accept Shipper's Export Declarations containing known errors and omissions, and may require their correction, but acceptance by the Customs Director shall not be construed as evidence that all requirements have been met, and such acceptance shall not relieve the exporter of the responsibility to furnish complete and correct information at a later time if all requirements have in fact not been properly met.

§ 30.12 Time and place Shipper's Export Declarations required to be presented.

For shipments by mail, the Shipper's Export Declaration as required in § 30.1 shall be presented to the postmaster with the packages at the time of mailing. For shipments other than

by mail, except as otherwise provided, the Shipper's Export Declaration in the number of copies required by § 30.5 shall be delivered to the exporting carrier prior to exportation. It is the duty of the exporter (or his agent) to deliver the required number of copies of the Shipper's Export Declaration to the exporting carrier prior to exportation; failure of the exporter (or his agent) to do so constitutes a violation of the provisions of these regulations, and renders such exporter (or his agent) subject to the penalties provided for in § 30.95. For shipments by pipeline, the Shipper's Export Declaration is not required to be presented prior to exportation, and exportation will be permitted upon the understanding that the exporter or his agent, within 4 working days after the end of each calendar month, will file with the Customs Director having jurisdiction for the pipeline, a Shipper's Export Declaration in the number of copies specified in § 30.5 to cover exports to each consignee during the calendar month.

§§ 30.13—30.14 [Reserved]

§ 30.15 Procedure for presentation of declarations covering shipments from an interior point.

For shipments from an interior point, the Shipper's Export Declaration in the number of copies required in § 30.5 may be prepared and delivered by the exporter or his agent to the inland carrier to accompany the merchandise to the exporting carrier at the seaport, airport, or border port of exportation, or it may be otherwise delivered directly to the exporting carrier. In either case, the Shipper's Export Declaration must be in the exporting carrier's possession prior to exportation. (See § 30.6 for requirements for a separate set of Shipper's Export Declarations, for each car, truck or other vehicle, covering only the merchandise exported in that car, truck, or vehicle.)

§ 30.16 Corrections to Shipper's Export Declarations.

Exporters (or their agents) shall report corrections, cancellations, or amendments to information reported

on Shipper's Export Declarations to the Customs Director at the port of exportation (or, in the case of mail shipments, to the Postmaster at the post office where the shipment was mailed) as soon as the need to such correction, cancellation, or amendment is determined. Such corrections, cancellations, or amendments may be made directly onto the originally filed Shipper's Export Declaration if the originally filed declarations have not already been mailed to the Bureau of the Census. If the originally filed Shipper's Export Declarations have already been mailed to the Bureau of the Census, a photocopy, carbon, or other legible copy of the originally filed Shipper's Export Declaration, on which the incorrect data are neatly lined out and the corrected data entered thereon, shall be promptly filed with the Customs Director at the port of exportation (or, in the case of mail shipments, with the Postmaster at the post office where the shipment was mailed). Such correction copies should have the words "CORRECTION COPY" conspicuously shown in the upper right portion of the form. The provisions of this paragraph relating to the reporting of corrections, amendments, or cancellations of information, shall not be construed as a relaxation of the requirements of the laws and regulations pertaining to the preparation and filing of Shipper's Export Declarations.

[42 FR 56604, Oct. 27, 1977]

Subpart B—General Requirements—Exporting Carriers

§ 30.20 General statement of requirement for the filing of manifests and Shipper's Export Declarations by carriers.

(a) Carriers transporting merchandise from the United States, Puerto Rico, or U.S. Possessions to foreign countries; from the United States or Puerto Rico to the Virgin Islands of the United States; or between Puerto Rico and the United States; shall not be granted clearance, where clearance is required, and shall not depart, where clearance is not required, until manifests (for vessels, aircraft, and

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rail carriers) and Shipper's Export Declarations have been filed with the Customs Director as specified below, except as provided in § 30.24. Where for reasons beyond the control of the exporting carrier, a given declaration (or declarations) has not been received prior to exportation or departure, and the merchandise has been laden, such carrier shall not as a result of this circumstance be required to off-load the merchandise, or to delay its clearance (where clearance is required) or departure (if clearance is not required). However, the provisions of § 30.24 remain applicable.

(b) Except as otherwise specifically provided, declarations should not be filed at the place where the shipment originates if it is to be transshipped within the United States area before being dispatched to a foreign country or to its final destination in a nonforeign area. This applies to shipments originating in Puerto Rico or the Virgin Islands of the United States being forwarded to the United States for transshipment to another destination, and to shipments originating in the United States and being forwarded to Puerto Rico or the Virgin Islands of the United States for transshipment, as well as to merchandise being transshipped in Customs Districts within the States of the United States. In such cases, the declarations should be filed only with the Customs Director at the actual port of exportation.

(c) For purposes of these regulations, the port of exportation is defined as the Customs port at which or nearest to which the land surface carrier transporting the merchandise crosses the border of the United States into foreign territory, or, in the case of exportation by vessel or air, the Customs port where the merchandise is loaded on the vessel or aircraft which is to carry the merchandise to a foreign country or to a nonforeign area of ultimate destination.

[41 FR 9134, Mar. 3, 1976, as amended at 41 FR 42645, Sept. 28, 1976]

§ 30.21 Requirements for the filing of manifests.

(a) *Vessels.* Vessels transporting merchandise as specified in § 30.20 (except vessels exempted by paragraph (d) of

this section) shall file a complete manifest on Customs Form 1374 or similar form approved by the Customs Director. The manifest shall be filed with the Customs Director at the respective ports where the merchandise is laden, and shall show the destination of the vessel and list all the cargo so laden. For each item of cargo, the manifest shall show the marks and numbers of the packages; and a description of the articles, contents, quantities, and values, shall be shown; however, a notation on the manifest that values are as stated on the Shipper's Export Declaration, copies of which are attached to such manifest, will be accepted. There shall also be shown for each item of cargo the bill of lading number shown on the declaration covering the item, except that bill of lading numbers are not required on manifests covering cargo destined for Canada or a nonforeign area. If an item on a manifest is one for which a Shipper's Export Declaration is not required under the regulations in this part, a notation shall be inserted on the manifest as to the basis for the exemption. In lieu of a listing of cargo on Customs Form 1374, the list of cargo may be shown on bills of lading, cargo lists, or other similar commercial forms, attached to the manifest:

Provided, That the manifest is completely executed on Customs Form 1374 or similar form approved by the Customs Director, except for particulars as to cargo: *And provided also,* That the bills of lading, cargo lists, or other commercial forms are securely attached to that form in such manner as to constitute one document; that they are incorporated by suitable reference on the face of the form such as "Cargo as per bills of lading attached," or "Cargo as per commercial forms attached," and that there is shown on the face of each bill the information required by Customs Form 1374 for the cargo covered by that document. The manifest of vessels clearing for foreign countries shall also show the quantities and values of bunker fuel taken aboard at that port for fueling use of the vessel, apart from such quantities as may have been laden on vessels as cargo. The quantity of coal shall be reported in tons, and the

quantity of fuel oil shall be reported in barrels of 42 gallons. Fuel oil shall be described in such manner as to identify diesel oil as distinguished from other types of fuel oil.

(b) *Aircraft.* Aircraft transporting merchandise as specified in § 30.20 shall file a complete manifest on Customs Form 7509. Such manifest shall be filed with the Customs Director at the respective ports where the merchandise is laden aboard the aircraft which is to carry the merchandise to the foreign country or to its ultimate destination in a nonforeign area, and shall list all the cargo so laden and show, for each item, the air waybill number or marks and numbers on packages, the number of packages, and the nature of the goods, except as otherwise provided in this paragraph (b). In addition, for any item for which a Shipper's Export Declaration is not required under the regulations in this part, a notation as to the basis for the exemption shall be inserted on the manifest, or on the waybill filed in lieu of listing on the manifest as provided below. In lieu of listing the cargo on the manifest:

(1) In the case of shipments on an air waybill, a copy of each document may be attached to the cargo manifest, the numbers of such air waybills listed in the body of the manifest, and the statement "Cargo as per Air Waybills Attached" noted on the manifest, or (2) on direct departures only, for shipments requiring a Shipper's Export Declaration a copy of each export declaration may be attached to the cargo manifest. In such case the Air Waybill numbers of such declaration shall be listed on the cargo manifest in the column for air waybill numbers, and the statement "Cargo as per Export Declarations Attached" noted on the manifest. Under this alternative procedure, any shipments not requiring a Shipper's Export Declaration shall be listed on the manifest, and a notation as to the basis for the exemption shall be shown. For aircraft carrying merchandise on direct flights between the United States and Puerto Rico, where the conditions of 19 CFR 6.8(e) of the Customs Regulations are met and complied with, a cargo manifest shall be required only for any

merchandise transported as cargo for which Shipper's Export Declarations are required to be filed but which cannot be timely filed. For cargo requiring Shipper's Export Declarations, a declaration shall be made on the cargo manifest, or if none is required under the provisions of this section, then either on the form for a cargo manifest or the form for making a general declaration as required by Customs Regulations. This declaration shall state either "Attached Shipper's Export Declarations together with the items (if any) listed on the manifest represent a full and complete enumeration and description of the cargo carried on this flight except that for which Shipper's Export Declarations are not required" or "All required cargo documents will be filed within the 4-day bond period," the latter statement to be used in those instances where none of the Shipper's Export Declarations are available at the time of departure. When the Shipper's Export Declarations and any required cargo manifests are in fact subsequently filed, they shall be accompanied by the following declaration:

Attached Shipper's Export Declarations represent a full and complete enumeration and description (or complete/supplement enumeration and description) of the cargo carried on aircraft no.— flight no.— cleared direct for— on— except that cargo for which Shipper's Export Declarations are not required in accordance with the Foreign Trade Statistics Regulations.

Airline————

Authorized Agent————

(c) *Rail carriers.* Rail carriers transporting merchandise as specified in § 30.20 shall file a car manifest. Such manifest shall be filed with the Customs Director at the border port of exportation, giving the marks and numbers, the name of the shipper or consignor, description of goods and the destination thereof. The manifest may be a waybill, or a copy thereof, or a copy of the manifest prepared for foreign customs. For any item for which a Shipper's Export Declaration is not required by these regulations, a notation on the manifest, or an oral declaration to the Customs Director, shall

be made by the carrier as to the basis for the exemption.

(d) *Carriers not required to file manifests.* These regulations do not require the filing of manifests by carriers other than vessels, aircraft and rail carriers, nor by vessels under 5 net tons engaged in trade with a foreign country otherwise than by sea, nor by vessels specifically exempted from entry by section 441, Tariff Act of 1930, as amended.

(13 U.S.C. 302; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950, Department of Commerce Order No. 35-2A, August 4, 1975, 40 FR 42765)

[41 FR 9134, Mar. 3, 1976, as amended at 44 FR 58687, Oct. 11, 1979]

§ 30.22 Requirements for the filing of Shipper's Export Declarations by departing carriers.

(a) To meet the requirements of § 30.20 for the filing of Shipper's Export Declarations, every departing carrier transporting merchandise as specified in § 30.20, including vessels, aircraft, rail carriers, trucks and other vehicles, ferries, and every other carrier shall deliver to the District Director of Customs at the port of exportation, with the manifest of the carrier, if a manifest is required by the regulations in this part, Shipper's Export Declarations prepared and signed by the exporters or their agents covering all the cargo for which such Shipper's Export Declarations are required by the regulations in this part.

(b) The exporting carrier shall be responsible for the accuracy of the following items of information (where required) on the declaration: Name of carrier (including flag, if vessel carrier), foreign port of unloading, bill of lading or air waybill number, and whether or not containerized.

(c) Except as provided in paragraph (d) of this section, when a transportation company finds, prior to the filing of declarations and manifest as provided in paragraph (a) of this section, that due to circumstances beyond the control of the transportation company or to inadvertence, a portion of the merchandise covered by an individual Shipper's Export Declaration has not been exported on the intended carrier, the transportation company shall cor-

rect the descriptions and the quantity, value and shipping weight (if any) amounts shown on the declaration to reflect the amount actually exported on the carrier named in the Shipper's Export Declaration. If a short shipment of this type is discovered by the carrier after the Shipper's Export Declaration in question has been delivered to the District Director of Customs, the transportation company will immediately notify the District Director of Customs so that a correction can be made by the Director on all copies of the declaration if it is still in his possession. If the statistical copy of the declaration has been transmitted by the Director to the Bureau of the Census at the time of such notification, the Director will require the exporter (or his agent) to file a "Correction Copy" of the originally filed Shipper's Export Declaration as described in § 30.16 of these regulations. If the balance of the short-shipped merchandise is subsequently exported, a new Shipper's Export Declaration, complete in all detail, will be required. If the short-shipped merchandise is exported on a carrier of the transportation company named in the original declaration, and if such exportation is made within a reasonable period, the District Director of Customs may accept a declaration executed by such transportation company; otherwise the new declaration shall be executed by the exporter or his agent. In any event, the new declaration shall contain the following statement:

These commodities or technical data were included, but not shipped, on a Shipper's Export Declaration filed at _____ (Port) on _____ (Date).

(d) When a shipment by air covered by a single Shipper's Export Declaration is divided by the transportation company and exported in more than one aircraft of the transportation company, the "split shipment" procedure provided in § 30.41 shall be followed by the transportation company in delivering manifests and Shipper's Export Declarations to the District Director of Customs.

(e) Exporting carriers are authorized to amend incorrect shipping weights reported on Shipper's Export Declara-

tions, and to prorate total shipping weights among the individual commodities, where such carriers are able to do so based upon information in their possession.

(13 U.S.C. 302; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950; Department of Commerce Organization Order No. 35-2A, Aug. 4, 1975, 40 FR 42765)

[41 FR 9134, Mar. 3, 1976, as amended at 43 FR 56030, Nov. 30, 1978; 44 FR 1971, Jan. 8, 1979; 50 FR 23403, June 24, 1985]

§ 30.23 Requirements for the filing of Shipper's Export Declarations by pipeline carriers.

The operator of a pipeline may transport merchandise to a foreign country without prior filing of Shipper's Export Declarations, on the condition that within 4 days following the end of each calendar month the pipeline operator will deliver to the Customs Director Shipper's Export Declarations prepared by the exporter or his agent covering all exportations through the pipeline to each consignee during the month.

§ 30.24 Clearance or departure of carriers under bond on incomplete manifest or Shipper's Export Declarations.

(a) For purposes of the regulations in this part, clearance (where clearance is required) or permission to depart (where clearance is not required) may be granted to any carrier by the Customs Director prior to the filing of a complete manifest as required under the regulations in this part, or prior to the filing by the carrier of all required Shipper's Export Declarations, provided that a bond as specified in paragraph (b) of this section is filed with the Customs Director. The condition of the bond shall be that a complete manifest, where a manifest is required by the regulations in this part, and all required Shipper's Export Declarations, shall be filed by the carrier not later than the fourth business day after clearance (where clearance is required) or departure (where clearance is not required) of the carrier for all carriers except as otherwise specifically provided in paragraphs (a)(1) and (2) of this section.

(1) For shipments aboard a U.S. flag carrier between the United States and Puerto Rico, or from the United States or Puerto Rico to the Virgin Islands of the United States, the condition of the bond shall be that a complete manifest (where a manifest is required) and all required Shipper's Export Declarations shall be filed by the carrier not later than the seventh business day after departure.

(2) For rail carriers to Canada, the condition of the bond shall be that the manifest and all required Shipper's Export Declarations shall be filed not later than the 15th business day after departure.

In the event that any required manifest and all required Shipper's Export Declarations are not filed by the carrier within the period provided by the bond, then a penalty of \$50 shall be exacted for each day's delinquency beyond the allowed period of 4 days, 7 days, or 15 days, as appropriate; and if the completed manifest, where required, and all required Shipper's Export Declarations are not filed within 3 days following the period of 4 days, 7 days, or 15 days, allowed under the bond, then for each succeeding day of delinquency a penalty of \$100 shall be exacted, but no penalty shall exceed \$1,000 in total. Remission or mitigation of the penalties provided herein may be granted in those cases where, in the judgment of the administering authority provided in paragraph (b) of this section, the penalties were incurred without willful negligence or fraud, or other circumstances justify a remission or mitigation.

(b) Bonds filed in accordance with the provisions of this § 30.24 may take the form of a single entry bond on Customs Form 7567 in the amount of \$1,000 or of a term or blanket bond on Customs Form 7569 in the amount of \$10,000 or such larger amount as the Secretary of the Treasury may prescribe, or in other approved form. Except as provided below in this paragraph, there shall be shown on the bond, or on a separate listing which refers to and is made a part of the bond, a pro forma list of shipments on board the departing carrier for which Shipper's Export Declarations have

not been filed with the Customs Director. The list shall show for each such shipment the name of the shipper, the country to which exported, marks and numbers of the packages, the number and kind of packages, a description of the goods and the value (or estimated value). However, where such waiver will not interfere with the ability of the Customs Director to check on performance under the bond, or with the identification of the shipment for purposes of obtaining statistical information in the event of failure of performance under the bond, the Customs Director may waive the requirement for the pro forma list of shipments for which declarations are missing, or may accept a list containing less than the items of information enumerated above. Approval of bonds and administration of the provisions of the regulations in this part relating to performance by carriers under such bonds, including remission and mitigation of penalties incurred by the carriers, are hereby delegated to the Commissioner of Customs or his delegate to be carried out in accordance with the provisions of section 623 of the Tariff Act of 1930, as amended, and the regulations of the U.S. Customs Service issued pursuant thereto.

[41 FR 9134, Mar. 3, 1976, as amended at 41 FR 42645, Sept. 28, 1976]

Subpart C—Special Provisions Applicable Under Particular Circumstances

§ 30.30 Values for certain types of transactions.

The following special arrangements govern the values to be reported for shipments of the following unusual types:

(a) *Subsidized exports of agricultural products.* Where provision is made for the payment of an export subsidy to the exporter for the exportation of agricultural commodities under a program of the Department of Agriculture, the value required to be shown on the export declaration is the f.a.s. value as defined in § 30.7(q), based on the selling price paid by the foreign importer, excluding the amount of the subsidy.

(b) *GSA exports of excess personal property.* For exports of General Services Administration excess personal property, the value to be shown on the Shipper's Export Declaration will be the total of the estimated "fair value," if any, at which the property was transferred to GSA by the holding agency, plus charges, when applicable, to the port of export, such as packing, rehabilitation, inland freight or drayage. The estimated "fair value" may be zero, or it may be a percentage of the original or estimated acquisition costs. (Export Declarations for such shipments will bear the notation "Excess Personal Property, GSA Regulations 1-III, 303.03.")

§ 30.31 Identification of certain nonstatistical and other unusual transactions.

In order to enable the Bureau of the Census to make a judgment as to the statistical or other status of certain export transactions, Shipper's Export Declarations covering the following types of transactions should carry a statement beneath the commodity description clearly identifying the transactions as such:

(a) Merchandise exported for repair only, and other temporary exports to be returned to the United States which are not sold and do not enter the trade of the country to which shipped, e.g., merchandise for exhibition (not for exhibition and possible sale), horses or other animals for breeding or grazing, etc.

(b) The return of merchandise previously imported for repair only and other returns to the foreign shipper of temporarily imported merchandise (declared as such on importation) on which no alteration or processing has been performed; e.g., foreign merchandise being returned to the country of origin after importation into the United States for exhibition only.

(c) Shipments of material in connection with construction, maintenance, and related work being done on projects for the U.S. Armed Forces. Equipment and other material shipped for temporary use on such projects and intended for return to the United States should be identified separately from construction material or other

goods which will become a part of or which will be consumed in the construction or maintenance work.

§ 30.32 [Reserved]

§ 30.33 Vessels, planes, cargo vans, and other carriers and containers sold foreign.

(a) Vessels, locomotives, rail cars, ferries, trucks, other vehicles, trailers, pallets, cargo vans, lift vans, or similar shipping containers are not considered "shipped" in terms of these regulations in this part when they are moving, either loaded or empty, without transfer of ownership or title, in their capacity as carriers of merchandise or as instruments of such carriers, and Shipper's Export Declarations are not required therefor when so moving.

(b) However, Shipper's Export Declarations shall be filed for such items, when moving as merchandise pursuant to sale or other transfer from ownership in the United States to ownership abroad. When a new vessel built in the United States for foreign account clears under a certificate of record (Commerce Form 1316) a Shipper's Export Declaration must be furnished by the agents or prepared by Customs for statistical purposes. If a vessel, car, vehicle, or container, whether in service or newly built or manufactured, is sold or transferred to foreign ownership while in the Customs area of the United States or at a port in such area, Shipper's Export Declarations shall be filed in accordance with the general requirements of the regulations in this part, at the port through or from which the vessel, car, vehicle, or container first leaves the United States after sale or transfer. If the vessel, car, vehicle, or shipping container is outside the Customs area of the United States at the time of sale or transfer to foreign ownership, Shipper's Export Declarations shall be filed at the last port of clearance or departure from the United States prior to sale or transfer. The country of destination to be shown on the Shipper's Export Declaration for vessels sold foreign is the country of new ownership. The country for which the vessel clears, or the country of registry of the vessel, should not be reported as the country

of destination on the Shipper's Export Declaration unless such country is the country of new ownership.

§ 30.34 Return of exported cargo to the United States prior to reaching its final destination.

(a) When a vessel carrying cargo which cleared from a port in the U.S. Customs area returns to the U.S. Customs area before it reaches its destination and discharges any or all of its cargo in the United States, the Customs Director at the port of unlading shall notify the Foreign Trade Division, Bureau of the Census, of this fact. The letter of notification shall contain the following information: Name of the carrier, dates of clearance, manifest numbers assigned at the various Customs ports at which cargo was laden and the final disposition of all cargo. If the vessel returns to the port at which the cargo was originally laden, the letter of notification shall also include the bill of lading numbers shown on each export declaration filed at the time of clearance.

(b) For shipments by air where the Shipper's Export Declarations are filed at the port of lading, if it becomes necessary because of an emergency to unload part or all of the cargo at another port in the U.S. Customs area (other than the port in Puerto Rico or U.S. Possession which is its final destination), the Shipper's Export Declarations filed at the port of lading need not be cancelled if the merchandise is reloaded on another plane at the second port within a reasonable time and proceeds to its country of destination. If there is unreasonable delay in reloading, the originally filed declarations should be cancelled and new declarations should be filed at the second port of lading. If for any reason, the merchandise remains permanently in the United States, the Customs Director at the first port of lading must be notified to cancel the Shipper's Export Declarations which have been filed. This provision is not intended as an exception from the requirements of § 30.12 as to the place at which Shipper's Export Declarations are required to be filed; it

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is intended only for cases where an emergency requires an unintended unloading after the requirements of § 30.12 have been met.

§ 30.35 Shipments between U.S. points in transit through Canada diverted to Canada.

When commodities being shipped in transit through Canada to other United States ports without the filing of a Shipper's Export Declaration (as provided in § 30.55) are diverted after leaving the United States, for import into Canada, Shipper's Export Declarations in accordance with the requirements of these regulations shall be filed with the Customs Director at the port of exportation by the exporter or his agent promptly upon such diversion.

§ 30.36 [Reserved]

§ 30.37 Exceptions from the requirement for reporting complete commodity detail on the Shipper's Export Declaration.

(a) Where it can be determined that particular types of U.S. Government shipments, or shipments for Government projects, are of such nature that they should not be included in the export statistics, and further, where no detriment to the export control program would be involved, special arrangements can sometimes be made to waive compliance with specific portions of the requirements of § 30.7 with respect to the reporting of detailed information on the Shipper's Export Declaration. Such exceptions will be made only upon application by the exporter and specific authorization to the Customs Director and the exporter for the particular project or shipment, approved by both the Bureau of the Census and the Office of Export Administration, and will be conditioned upon a prescribed identification which must appear upon the declarations. The particular types of shipments for which such exceptions may be possible are as follows:

(1) Shipments to a contractor under a Department of Defense or other armed service contract for the construction of facilities for the use of the U.S. armed services.

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(2) Temporary exports by or to U.S. Government agencies.

(3) Shipments of supplies and material to contractors in the Panama Canal Zone for the construction and/or maintenance of the Panama Canal Zone and its facilities.

(b) Special exemptions to specific portions of the requirements of § 30.7 with respect to the reporting of detailed information on the Shipper's Export Declaration may also be granted by the Bureau of the Census with the concurrence of the Office of Export Administration for certain Department of Defense shipments, or shipments made on behalf of the Department of Defense, to foreign governments under the cash reimbursable provisions of the Mutual Defense Assistance Program (military sales), if and when arrangements have been made for the Bureau of the Census to obtain the desired statistical information other than through the reporting of complete commodity detail on the Shipper's Export Declaration.

§ 30.38 [Reserved]

§ 30.39 Authorization for reporting statistical information other than by means of individual Shipper's Export Declarations filed for each shipment.

(a) A Customs Director, if he finds that no administrative difficulties are involved, may authorize the filing of one Shipper's Export Declaration per month, in lieu of a declaration for each shipment as required by § 30.6, for the following types of frequently recurring shipments by air from a single consignor from one U.S. airport to one country of destination and one port of unloading via a single airline:

(1) Newspapers and magazines.

(2) Newsreel films, mats, proofs, etc.

(3) Airline timetables being shipped by the airline.

(4) Shipments of registered carrier stores by a United States or Canadian airline to each of its installations or agents abroad which are exported under General License RCS of the Export Administration Regulations set forth in § 371.12(d) of this title. Such authorization will be subject to the requirement that a declaration covering all such shipments made during the

month named on the declaration will be filed by the consignor with the Customs Director no later than the fifth working day of the month following the month covered, and also except for shipments under paragraph (a)(4) of this section, subject to the requirement that a Continuation Sheet or other attachment filed with the declaration will list the names of the individual consignees and the number of items shipped to each.

(b) In addition to the procedures authorized in paragraph (a) of this section, the Bureau of the Census, with the concurrence of the Office of Export Administration, may, on an individual case basis, authorize exemption from the requirement of § 30.6 that an export declaration be filed for each shipment, the exemption to be conditioned upon the filing, after the close of each month, of a single export declaration or other statistical report, in an approved format including punch cards, computer tapes, etc., covering shipments made during the month to all destinations except countries prohibited by the Export Administration Regulations of the Office of Export Administration (Parts 368-399 of this title),⁷ as follows:

(1) Application for permission to file export information on a monthly basis may be made directly to the Foreign Trade Division, Bureau of the Census, Washington, D.C. 20233, with a copy sent to the Office of Export Administration, International Trade Administration, Washington, D.C. 20230.

(2) Authorization will be issued only when in the judgment of the Bureau of the Census complete and accurate information will be available on a monthly basis from the records of the applicant, and where the exemption from the filing of a Shipper's Export Declaration for individual shipments represents a reduction of reporting procedure in the individual case. (In general, these special reporting procedures will be limited to shippers who, on a continuing basis, make at least

twenty (20) shipments per month out of an individual port by each of any one or more methods of transportation, and who are able to furnish summary data each month in all the detail required for statistical processing in terms of the various classifications and cross-classifications now required for statistical purposes, such as commodity data by port, by method of transportation and/or by name of carrier.) Where export control is a consideration, such authorizations will be granted when in the judgment of the Office of Export Administration the applicant also has demonstrated that it has established adequate internal operating procedures and has taken other satisfactory safeguards to assure compliance with Export Administration Regulations without government review of individual declarations.

(3)(i) Procedures for clearing individual shipments through Customs without the presentation of a declaration, and the exact type of monthly or other report to be delivered, will be discussed and specifications developed in connection with each application.

(ii) Such authorizations will be subject to the requirement that declarations or other approved summarizations containing the necessary statistical information for all such shipments made during a given month will be submitted no later than the fifth working day of the month following the month of export. Moreover, records must be maintained in such a manner that the Bureau of the Census, the Office of Export Administration, or the U.S. Customs Service may, if desired, verify that a given shipment was, in fact, included in a particular monthly report.

(c) Authorization for the filing of monthly declarations or other summarizations under paragraphs (a) and (b) of this section may be terminated at any time.

(d) Part 366 of the Department of Commerce Export Administration Regulations contains complete information on the requirements of the Office of Export Administration in connection with the granting of authorizations for the filing of monthly summaries of export shipments.

⁷ Country groups are established and maintained by the Office of Export Administration. See Export Administration Regulations (15 CFR Parts 368-399) for lists of countries included in each country group.

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[41 FR 9134, Mar. 3, 1976, as amended at 47 FR 7213, Feb. 18, 1982]

§ 30.40 Single declaration for multiple consignees.

As a further exception to the requirements of § 30.6, shipper's are authorized, subject to the approval of the Customs Director, to file one Shipper's Export Declaration (in duplicate) for all shipments, other than those made to U.S. Government agencies, offices, establishments, or representatives of any of these which are laden on one vessel or aircraft and destined to go to one port in Puerto Rico, the Virgin Islands of the United States, or the Canal Zone. For such shipments no consignee information needs to be furnished whether such shipments are made to one or several consignees.

[41 FR 42645, Sept. 28, 1976]

§ 30.41 "Split shipments" by air.

When a shipment by air covered by a single Shipper's Export Declaration is divided by the exporting transportation company at the port where the declaration is filed, and part of the shipment is exported on one aircraft and part on another aircraft of the same transportation company, the following procedure shall apply:

(a) The carrier will deliver the manifest copy of the declaration to the District Director of Customs with the manifest covering the flight on which the first part of the split shipment is exported, and will make no changes on the declaration. However, the manifest will show in the "number of packages" column the actual portion of the declared total quantity being carried and will carry a notation to indicate "Split Shipment."

(b) On each subsequent manifest covering a flight on which any part of a split shipment is exported, a prominent notation "SPLIT SHIPMENT" will be made adjacent to the item on the manifest for ready identification. For the last shipment the notation will read "SPLIT SHIPMENT, FINAL."

Each subsequent manifest covering a part of a split shipment shall also show in the "number of packages" column only the merchandise carried on that particular flight and a refer-

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ence to the total amount originally declared for export, e.g., 5 of 11, or 5/11; and immediately following the line showing the portion of the split shipment carried on that flight, a notation will be made showing the air waybill number shown on the original Shipper's Export Declaration and the portions of the originally declared total carried on each previous flight together with the number and date of each such previous flight, e.g., original Shipper's Export Declaration AWB 123; 2 of 11 flight 36A, June 6; 4 of 11, flight 40X, June 10.

(c) Export declarations will not be required for these subsequent shipments.

Subpart D—Exemptions From the Requirements for the Filing of Shipper's Export Declarations

§ 30.50 Procedure for shipments exempt from the requirements for Shipper's Export Declarations.

Except as provided below, where an exemption from the requirement for the filing of a Shipper's Export Declaration is provided in this subpart, a notation describing the basis for the exemption shall be made on the bill of lading, air waybill, or other loading document for carrier use, with a reference to the number of the section in this part where the particular exemption is provided so that the carrier at the time of lading, and the Customs Director at the time of exportation, may verify that no declaration is required. If none of the above named documents is used, the person transporting the merchandise must be prepared to identify to the Customs Director at the port of exportation, at the time of exportation but prior to departure, any merchandise which is exempt from the requirement for the filing of a Shipper's Export Declaration and explain to the Customs Director the basis for the exemption. Where shipments are exempt from the requirement for Shipper's Export Declarations on the basis of value and destination, the appearance of the value and destination on the bill of lading, air waybill, or other loading document for carrier use, shall be acceptable as

evidence of the exemption, and no reference need be made to the particular section of these regulations where the exemption is provided.

§ 30.51 Government shipments not generally exempt.

Except as provided below in this subpart, Shipper's Export Declarations are required for exports by or to U.S. Government agencies, whether or not shipped on a Government bill of lading. No general exemption is provided for Government shipments, as such.

§ 30.52 Special exemptions for shipments to the U.S. armed services.

Shipper's Export Declarations are not required for the following types of shipments to the U.S. armed services:

(a) All commodities, whether shipped commercially or through government channels, consigned to the U.S. armed services for their exclusive use, including shipments to armed services exchange systems. (This exemption does not apply to shipments which are for the ultimate use of the U.S. armed services but which are not consigned to the U.S. armed services. However, special exceptions to the requirements of these regulations which may in some circumstances apply to shipments for the ultimate use of the U.S. armed services but not so consigned are provided in § 30.37.)

(b) Department of Defense Military Assistance Program Grant-Aid shipments being transported as Department of Defense cargo under the provisions of Customs Circular Letters VES-5-MA, March 8, 1954, (MC 133), VES-5-MA, June 17, 1954 (MC 133 S.1), VES-5-MA, May 24, 1956 (MC 133 S.2) and RES-20-MC, January 25, 1960 (CC 76). Under arrangements with the Department of Defense, information on these shipments for inclusion in U.S. export statistics will be furnished directly to the Bureau of the Census by the Department of Defense. This exception from the filing of Shipper's Export Declarations does not apply to Military Assistance Program Grant-Aid shipments to which a foreign government has taken title before exportation or to any Grant-Aid Military-Aid Program shipment

moving in any manner other than as Department of Defense cargo. (See § 30.37 for possible exceptions to the full reporting requirements of § 30.7 for certain military sales shipments not exempt from the requirement for the Shipper's Export Declaration.)

§ 30.53 Special exemptions for certain shipments to U.S. Government agencies and employees.

Shipper's Export Declarations are not required for the following types of shipments to U.S. Government agencies and employees:

(a) Office furniture, office equipment, and office supplies shipped to and for the exclusive use of U.S. Government offices.

(b) Household goods and personal property shipped to and for the exclusive and personal use of U.S. Government employees.

(c) Food, medicines, and related items and other commissary supplies shipped to U.S. Government offices or employees for the exclusive use of such employees, or to U.S. Government employee cooperative or other associations for subsequent sale or other distribution to such employees.

(d) Books, maps, charts, pamphlets, and similar articles shipped by U.S. Government offices to U.S. or foreign libraries, government establishments or similar institutions.

(e) All commodities shipped to and for the exclusive use of the Panama Canal Zone Government or the Panama Canal Company.

§ 30.54 Special exemptions for mail shipments.

Shipper's Export Declaration are not required for the following kinds of shipments by mail:

(a) Shipments (except shipments requiring a validated export license) where one or more of the following conditions are present:

(1) Either the consignor or the consignee is not a business concern.

(2) The shipment is valued at \$500 or under.

(3) The goods are not mailed for commercial consideration.

(b) Technical data regardless of value, licensing requirements, and the

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other criteria set forth in paragraph (a) of this section.

(13 U.S.C. 302; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950, Department of Commerce Order No. 35-2A, Aug. 4, 1975, 40 FR 42765)

[41 FR 9134, Mar. 3, 1976, as amended at 44 FR 38833, July 3, 1979]

§ 30.55 Miscellaneous exemptions.

Shipper's Export Declarations are not required for the following kinds of shipments:

(a) Diplomatic pouches and their contents.

(b) Human remains and accompanying appropriate receptacles and flowers.

(c) Shipments from one point in the United States to another thereof by routes passing through Mexico or Canada.

(d) Shipments from one point in Canada or Mexico to another point thereof by routes through the United States.

(e) Shipments, other than by vessel, or merchandise for which no validated export licenses are required, transported in bond through the United States, and exported from another U.S. port, or transshipped and exported directly from the port of arrival.

(f) Shipments to foreign libraries, government establishments, or similar institutions, as provided in § 30.53(d).

(g) Shipments of single gift parcels as encompassed by Office of Export Administration General License GIFT.

(h) Shipments (except shipments requiring a validated export license, and excluding shipments through the U.S. Postal Service) between the United States and Puerto Rico, to the Virgin Islands of the United States, and to all countries except countries prohibited by the Export Administration Regulations of the Office of Export Administration (15 CFR Parts 368-399),* where the value of the commodities classified under a single Schedule B number and shipped on the same exporting carrier from one exporter to

* Country groups are established and maintained by the Office of Export Administration. See Export Administration Regulations (15 CFR Parts 368-399) for lists of countries included in each country group.

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one importer is \$1000 or under: *Provided however*, that this exemption shall be conditioned upon the filing of such reports as the Bureau of the Census shall periodically require to compile statistics on \$1000-and-under shipments.

(i) Shipments of interplant correspondence, executed invoices and other documents, and other shipments of company business records from a U.S. firm to its subsidiary or affiliate.

(j) Shipments of pets as baggage, accompanied or unaccompanied, of persons leaving the United States, including members of crews on vessels and aircraft.

(k) Shipments for use in connection with NASA tracking systems under Office of Export Administration Project License DL-5355-S.

(l) Shipments of aircraft parts and equipment, and food, saloon, slop chest, and related stores, provisions, and supplies for use on aircraft, by a U.S. airline to its own installations, aircraft, and agents abroad, under Department of Commerce, Office of Export Administration General License RCS.

(m) Shipments for use in connection with NOAA operations under the Office of Export Administration General License G-NOAA. }

(13 U.S.C. 302; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950, Department of Commerce Order No. 35-2A, Aug. 4, 1975, 40 FR 42765)

[41 FR 9134, Mar. 3, 1976, as amended at 47 FR 7214, Feb. 18, 1982; 50 FR 23403, June 24, 1985]

§ 30.56 Conditional exemptions.

Shipper's Export Declarations are not required for the following classes of commodities when they are not shipped as cargo under a bill of lading or an air waybill and do not require a validated export license, but the exporter should be prepared to make oral declaration to the Customs Director, if required:

(a) Baggage and personal effects, accompanied or unaccompanied, of persons leaving the United States, including members of crews on vessels and aircraft, such as:

(1) Usual and reasonable kinds and quantities of wearing apparel, articles of personal adornment, toilet articles, medicinal supplies, food, souvenirs, games, and similar personal effects and their containers.

(2) Usual and reasonable kinds and quantities of furniture, household effects household furnishings, and their containers.

(3) Usual and reasonable kinds and quantities of vehicles, such as passenger cars, station wagons, trucks, trailers, motorcycles, bicycles, tricycles, perambulators, and their containers.

Provided, That the above-indicated baggage and personal effects (i) shall include only such articles as are owned by such person or members of his immediate family; (ii) shall be in his possession at the time of or prior to his departure from the United States for the foreign country; (iii) are necessary and appropriate for the use of such person or his immediate family; (iv) are intended for his use or the use of his immediate family; and (v) are not intended for sale.

(b) Tools of trade of persons leaving the United States covering usual and reasonable kinds and quantities of implements, instruments and tools of trade, occupation, or employment and their containers. *Provided*, That the above-indicated tools of trade (1) shall include only such articles as are owned by such persons; (2) shall be in his possession at the time of or prior to his departure from the United States for a foreign country; (3) are necessary and appropriate and intended for the personal use of such person; and (4) are not intended for sale.

(c) Carriers' stores (including merchandise carried in ships aboard carriers for sale to passengers), supplies, and equipment for departing vessels, planes, or other carriers, including usual and reasonable kinds and quantities of bunker fuel, deck engine and steward department stores, provisions and supplies, medicinal and surgical supplies, food stores, slop chest articles, and saloon stores or supplies for use or consumption on board and not intended for unloading in a foreign country, and including usual and reasonable kinds and quantities of equipment and spare parts for permanent

use on the carrier when necessary for proper operation of such carrier and not intended for unloading in a foreign country. Hay, straw, feed, and other appurtenances necessary to the care and feeding of livestock while enroute to a foreign destination are considered part of carriers' stores of carrying vessels, trains, planes, etc.

(d) Dunnage of usual and reasonable kinds and quantities necessary and appropriate to stow or secure cargo on the outgoing or any immediate return voyage of an exporting carrier, when exported solely for use as dunnage and not intended for unloading in a foreign country.

§ 30.57 Information on export declarations for shipments of types of goods covered by § 30.56 not conditionally exempt.

(a) In those cases where Shipper's Export Declarations are required for articles enumerated in § 30.56 (a) through (d) only by virtue of their being shipped under a bill of lading or an air waybill (no validated license is required) the export declaration should clearly show in the column for commodity description, in lieu of the complete commodity description a statement that the shipment consists of baggage, personal effects, household effects, ship's stores, crew's effects, or as appropriate. In such cases, Schedule B commodity numbers should not be shown on the declarations.

(b) In those cases where the articles enumerated in § 30.56 (a) through (d) require a validated export license (whether or not shipped under a bill of lading or an air waybill) the Shipper's Export Declaration must identify the shipment as baggage, personal effects, etc., and must contain all the information normally required for any exportation made under a validated export license, i.e. complete commodity description, license number, Schedule B number, quantity, value, etc.

Subpart E—General Requirements—Importers

§ 30.70 Statistical information required on import entries.

Information for statistics on merchandise entering the United States from foreign countries, U.S. Foreign Trade Zones, and from the Virgin Islands of the United States, and other nonforeign areas (except Puerto Rico), is required to be reported by importers on the following Customs entry and withdrawal forms respectively required by U.S. Customs regulations for individual transactions: Custom Forms 7500, 7501, 7502, 7505, 7506, 7519, 7521, and 7535, and on Customs Form 7512 when used as an intranet entry to document immediate exportation or transportation and exportation. The following items of information for statistics shall be reported on the respective forms:^{*}

(a) *District and Port Code.* (All forms.) The Customs district code number and the port code number (as shown in Schedule D, *Classification of Customs Districts and Ports*) for the Customs port of entry or filing shall be supplied. (Where Customs does not require that the District and Port codes be inserted by importers, the codes will be filled in by Customs so that all entries and withdrawals received by the Bureau of the Census will bear these codes.)

(b) *Importing vessel or carrier.* (Not required for merchandise entering U.S. Customs territory from U.S. Foreign Trade Zones.) (1) (Customs Forms 7501, 7502, 7512, and 7521.) Information is required as to the carrier or means of transportation by which the merchandise was transported from a foreign country to the first port of unloading in the United States. If the merchandise has been further transported in bond between ports in the United States after having been unladen from the carrier on which it arrived

in the United States, the name of the domestic carrier shall not be substituted, and the information furnished shall reflect the name of the carrier or means of transportation by which the merchandise arrived in the first U.S. port of unloading.

(2) For merchandise arriving in the United States by vessel, the name of the importing vessel is required. The importing vessel is the vessel which transported the merchandise from the foreign port of lading to the first U.S. port of unloading.

(3) For merchandise arriving in the United States by air, the name and nationality of the importing airline is required. The importing airline is the airline which carried the merchandise from the foreign port of lading to the first U.S. port of unloading, and not a domestic airline carrying the merchandise after the initial unloading in the United States.

(4) For merchandise arriving in the United States by means of transportation other than vessel or air, the means of transportation from the foreign country is required, in such terms as "parcel post," "registered mail," "railroad," "trucks," "pipeline," etc.

(c) *Foreign port of lading.* (1) (Customs Forms 7501, 7502, 7512 and 7521.) For merchandise arriving in the United States by vessel or air, the name and country of the foreign port at which the merchandise was actually loaded on the vessel or aircraft that carried the merchandise to the United States is required. This information is not required for merchandise entering the U.S. Customs territory from a U.S. Foreign Trade Zone. For shipments originating in either Canada or Mexico by rail, truck, pipeline, or other nonvessel/nonair mode of transportation, supply the name of the province (Canada) or state (Mexico) where the merchandise was first loaded for exportation to the United States.

(2) For merchandise transshipped overseas in the course of shipment to the United States, whether or not covered by a through bill of lading, the information furnished shall reflect only the foreign port at which the merchandise was loaded on the vessel, aircraft, or other carrier which transported it to the first U.S. port of un-

^{*}The information required for statistical purposes is in most cases also required by Customs regulations for other purposes. (See § 30.80 for special reporting instructions for merchandise entering United States Customs Territory from United States Foreign Trade Zones.)

lading. Neither the foreign port of original lading nor any port of lading other than the last foreign port of lading shall be substituted. When a single Customs form covers merchandise loaded at more than one foreign port, the foreign port of lading shall be indicated separately in the "Marks and numbers and Country of origin" column immediately below the Country of origin designation and on the same line as the merchandise laden at each foreign port.

(3) For merchandise entering the U.S. Customs territory from a U.S. Foreign Trade Zone, the number of the Foreign Trade Zone, preceded by the letters "FTZ" shall be shown in this space.

(d) *U.S. port of unloading.* (Not required for merchandise entering U.S. Customs territory from U.S. Foreign Trade Zones.) (1) (Customs Forms 7501, 7502, 7512, and 7521.) For merchandise arriving in the United States by vessel or air, the U.S. port (as listed in Schedule D) at which the merchandise was unloaded from the importing vessel or aircraft is required, whether or not such port is a Customs port of entry. (For example, if entry is filed at the Port of Los Angeles for merchandise unloaded from the importing vessel at Long Beach, California, the entry should show Long Beach as the port of unloading.)

(2) When merchandise is transported in bond from the U.S. port where unladen from the importing vessel or carrier to another U.S. port or ports to be entered for consumption or warehouse, the port of unloading required to be shown on the consumption or warehouse entry is the port or point where the merchandise was unladen from the importing vessel or carrier before transportation in bond.

(e) *Date of importation.* (All forms.) For merchandise arriving in the United States by vessel, the month, day, and year on which the importing vessel transporting the merchandise from the foreign country arrived within the limits of the U.S. port at which the merchandise was or is to be unladen is required. The date of importation to be reported for merchandise arriving in the United States other than by vessel is the date on

which the merchandise arrives within the limits of the United States.

(f) *Country of origin.* (1) (All forms.) Country of origin shall be reported in the "marks and numbers and country of origin" column on entry and withdrawal forms (in the "marks and numbers" column on Forms 7512 and 7500), the "country of origin" space on the Special Customs Invoice form, and in a conspicuous place on commercial invoices supplied to Customs where the Special Customs Invoice form is not required. On multipage entries, country of origin should be shown on each page.

(2) Country of origin shall be reported in terms of the names designated in Schedule C-1, "*Classification of Country and Territory Designations for U.S. Import Statistics*," unless a more specific geographic area is required to be shown for other purposes. The country of origin is defined as the country in which the product was mined, grown or manufactured. Further labor, work or material added to an article in another foreign country or the Virgin Islands of the United States must effect a substantial transformation in order to render such other country the "country of origin." Such substantial transformations include smelting of ores, refining of crude products, and the like. The country of origin is not changed when the merchandise is subjected in another country merely to minor manipulations, such as sorting, grading, and the like. When the merchandise is invoiced in or exported from a country other than that in which it originated, the actual country of origin shall be specified rather than the country of invoice or exportation. The country of origin for imports of scrap and waste is the country in which the merchandise was reduced to scrap or waste. In the case of such commodities as industrial diamonds or antiques, if the origin of the merchandise is not known or cannot be ascertained with reasonable effort, the country from which the merchandise has been shipped shall be shown and shall be indicated as the "Country of Shipment."

(3) Except as provided below, the country of origin shown on import entries and withdrawals should be based

on information furnished by the foreign supplier on import invoices. The importer should inform his foreign supplier of the requirements and definitions of this section and instruct the foreign supplier to furnish information on the invoice as to country of origin in accordance with the above definition. If an invoice from the foreign supplier is not available at the time of entry, the importer shall enter the correct country of origin according to his best knowledge. In any case where the importer has reliable knowledge that the country of origin shown on the invoice is incorrect, he shall enter on the form the correct country of origin according to his best knowledge, indicating that it is a correction.

(4) When a single Customs form covers merchandise from more than one country of origin, the country of origin shall be indicated separately against each item (or group of items).

(g) *Description of merchandise.* (All forms.) Except on Customs Form 7512 when used as an Immediate Exportation or Transportation and Exportation entry, the description of merchandise shall be in terms of the Tariff Act in accordance with the Tariff Schedules of the United States Annotated for Statistical Reporting (TSUSA) and in sufficient detail to permit the identification of the TSUSA statistical reporting number to which each commodity properly belongs. The name of the commodity and any and all characteristics of the commodity which distinguish it from commodities of the same name covered by other TSUSA statistical reporting numbers shall be clearly and fully stated. For merchandise classified in TSUSA classifications for which the instruction "specify by name" is shown in TSUSA the specific name of the commodity or a further identifying description in addition to the description in the more general terms of the commodity classification definition is required. When Customs Form 7512 is used as an Immediate Exportation or Transportation and Exportation entry importers need only report in terms of the first five digits of TSUSA (i.e., in terms of TSUS).

(h) *Gross weight in pounds.* (Customs Forms 7501, 7502, 7512, and 7521,

for merchandise transported to the United States by vessel or air only.) Gross shipping weight in pounds shall be reported in column (2a) immediately below the description of merchandise (in "Gross Weight in Pounds" column on Form 7512 on the same horizontal line with value). Separate gross weight information is required for the merchandise covered by each reporting number, but if gross weight is not available for each reporting number included in one or more packages, approximate shipping weight for each item shall be estimated and reported. The total of these estimated weights should equal the actual gross shipping weight of the entire package or packages. However, for containerized cargo carried in lift vans, cargo vans, or similar substantial outer containers, the weight of such containers should not be included in the gross shipping weight of the merchandise covered by each reporting number.

(i) *Net quantity.* (All forms except 7535.) When a unit of quantity is specified in TSUSA for the reporting number under which the item is reported, net quantity shall be reported in the specified unit, and (except where the unit is "No." (number)) the unit in which reported shall also be shown on the entry following the net quantity figure. In cases where two units of quantity are shown for the commodity in TSUSA, net quantity shall be reported on the import entry in each of the specified units with the unit indicated in each case. The quantity in terms of the unit marked with a superior "v" in TSUSA should be shown on the entry on the same horizontal line with the value. The quantity in terms of any other units specified in TSUSA should be shown below the first quantity and should be enclosed in parentheses. If no unit of quantity is specified in TSUSA for the reporting number under which the item is reported, net quantity is not required to be reported on the import entry, and an "X" shall be entered in the "net quantity" column. Where the unit of quantity specified in TSUSA is "tons," long tons of 2,240 pounds shall be reported unless short tons of 2,000 pounds are specified in TSUSA. Quantities shall be shown in whole units

unless fractions of units are required for Customs purposes.

(j) *Value.* (All forms.) Except on Customs Form 7512 when used as an Immediate Exportation or Transportation and Exportation entry, the dollar value shall be reported on the forms in accordance with the definitions set forth in the Tariff Schedules of the United States Annotated (TSUSA) and sections 402 and 402a of the Tariff Act of 1930, as amended. Moreover, the value shall be reported in accordance with the format prescribed in the U.S. Customs Regulations. (On Customs Form 7512 when used as an Immediate Exportation entry, only the Customs value in accordance with sections 402 and 402a of the Tariff Act of 1930, as amended, need be reported.)

(k) *TSUSA reporting number.* (All forms.) Except on Customs Form 7512 when used as an in-transit entry, the reporting number according to the current edition of the Tariff Schedules of the United States Annotated shall be shown in the column provided on the form. The reporting number assigned shall reflect the correct TSUSA classification of the merchandise and be consistent with the rate of duty applicable to the commodity. Where correct reporting as indicated in TSUSA requires the use of more than one TSUSA commodity number, all required reporting numbers will be shown for an item on the Customs form. On Customs Form 7512 when used as an Immediate Exportation or Transportation and Exportation entry, the reporting number, in terms of the first five digits of TSUSA (TSUS), is required to be shown in the column provided on the form for "Description and Quantity of Merchandise." This code should appear to the right of that column, on the same line as the reported gross weight and value.

[41 FR 9134, Mar. 3, 1976, as amended at 42 FR 59839, Nov. 22, 1977; 47 FR 29829, July 9, 1982]

Subpart F—Special Provisions for Particular Types of Import Transactions

§ 30.80 [Reserved]

§ 30.81 Imports of merchandise into Guam.

(a) Carriers of merchandise to Guam shall not be permitted to unload cargo in Guam until the master or other person in charge of the carrier shall deliver to the Government of Guam at the place of unloading a manifest, cargo list, freight list or equivalent document showing a detailed account of merchandise destined for Guam on board such carrier, with the numbers and description of the packages according to their usual name or designation.

(b) For each shipment imported into Guam except as listed in paragraph (d) of this section, the importer in Guam shall furnish to the Government of Guam at the port of entry of the merchandise at the time of or prior to taking possession of such merchandise, the commercial invoice covering the shipment attached to a copy of the bill of lading or air waybill signed by the carrier. (Where the shipment is one for which no bill of lading (or air waybill) is utilized only a copy of the commercial invoice need be furnished.) In individual cases, where warranted in the opinion of the Government of Guam, the Government of Guam may release merchandise to the consignee prior to receipt of the commercial invoice and/or bill of lading or air waybill in the case of perishable articles or other merchandise, the immediate delivery of which is necessary.

(c) Information concerning individual transactions furnished to the Government of Guam pursuant to these regulations may not be disclosed by those having possession of or access to any copies of such information for official purposes, to anyone other than the exporter or importer except as specifically directed by the Bureau of the Census.

(d) The following kinds of shipments are not to be included in the statistics on shipments from the United States to Guam and the documentation pre-

scribed in paragraphs (a) and (b) of this section shall not be required for statistical purposes:

(1) Shipments to the U.S. Armed Forces;

(2) Shipments of office furniture, office equipment, and office supplies, to and for the exclusive use of U.S. Government offices;

(3) Baggage and personal effects, accompanied or unaccompanied, of persons leaving the U.S., and tools of trade, as described in § 30.56(a) and (b).

§ 30.82 Identification of U.S. merchandise returned for repair and reexport.

Import entries covering U.S. merchandise imported temporarily for repair or alteration and reexport are required to show the following statement: "Imported for Repair and Reexport."

§ 30.83 Statistical copy of mail and informal entries.

A legible copy of all mail and informal entries is required for statistical purposes. In addition to the information required to be shown for customs purposes, the value is also required to be shown for all merchandise including that not subject to duty.

Subpart G—General Administrative Provisions

§ 30.90 Confidential information, import entries and withdrawals.

The contents of the statistical copies of import entries and withdrawals on file with the Bureau of the Census are treated as confidential and will not be released without authorization by the U.S. Customs Service, in accordance with the policy set forth in 19 CFR 103.4 (Customs Regulations) relating to the copies on file in Customs offices.

§ 30.91 Confidential information, Shipper's Export Declarations.

(a) *Confidential status.* The Shipper's Export Declaration is an official Department of Commerce form, prescribed jointly by the Bureau of the Census and the International Trade Administration. Information supplied

thereon is confidential, for use solely for official purposes authorized by the Secretary of Commerce. Use for unauthorized purposes is not permitted. Information on Shipper's Export Declarations may not be disclosed to anyone except the exporter or his agent by those having possession of or access to any copy for official purposes, except as provided in paragraph (e) of this section.

(b) *Copying of information to manifests not permitted.* Since certain types of information from the outward manifests of ocean carriers can be made public under the provisions of the Customs Regulations, carriers are not permitted to copy information to manifests (or to bills of lading used in lieu of a listing of cargo on a manifest) from Shipper's Export Declarations in their possession for official purposes, except for (1) the bill of lading number on the declaration, (2) information on the declaration which is identical with bills of lading or other sources of information available to the carrier, and (3) items of information which are required by Export Administration Regulations to be identical or consistent on both documents.

(c) *Supplying of copies by exporters for unofficial purposes not permitted.* The regulations in this part spell out precise definitions to be followed in reporting information on Shipper's Export Declarations. Strict adherence to these definitions is necessary if the official purposes for which the forms are required are to be effectively accomplished. Because of the possibility that for other purposes different definitions would be appropriate, the supplying by exporters of any copies (or of the information from copies) for any unofficial purpose is considered detrimental to official objectives and is not permitted.

(d) *Limitations on issuance and reproduction of copies.* Consistent with the policy stated in paragraph (c) of this section, and with the confidential status of the document generally, the following limitations are placed upon the issuance of copies to exporters or their agents:

(1) A copy of a Shipper's Export Declaration may be supplied to exporters or their agents only when such

a copy is needed by the exporter to comply with: (i) Official requirements for presentation of a copy to the exporting carrier as authorization for export, (ii) export control requirements, or (iii) U.S. Department of Agriculture requirements for proof of export in connection with subsidy payments. Copies issued to exporters or their agents under paragraph (d)(1) (ii) or (iii) of this section will be stamped as follows by the Customs Director:

Certified pursuant to the Export Administration Regulations or to fulfill the requirements of a Federal Agency and not for any other purpose. May not be reproduced in any form.

(2) Use of copies of the Shipper's Export Declaration in connection with claims for exemption from internal revenue taxes or state taxes is not permitted.

(e) *Determination by the Secretary of Commerce.* When the Secretary of Commerce or delegate determines that the withholding of information provided by an individual Shipper's Export Declaration is contrary to the national interest, the Secretary or delegate may make such information available, taking such safeguards and precautions to limit dissemination as deemed appropriate under the circumstances. In recommendations regarding such actions, the Bureau of the Census will, in general, consider that it is not contrary to the national interest to withhold information on Shipper's Export Declarations from private individuals or businesses (except the exporter or the agent of the exporter) or from state or local government agencies or officials, regardless of the purposes for which the information may be requested. In recommendations regarding any other requests for access to official copies, a judgment in the light of circumstances will be made as to whether it is contrary to the national interest to apply the exemption, keeping in view that the maintenance of confidentiality has in itself an important element of national interest.

(13 U.S.C.302; and 5 U.S.C. 301; Reorg. Plan No. 5 of 1950, Department of Commerce Organization Order No. 35-2A, August 4, 1975, 40 FR 42765)

[41 FR 9134, Mar. 3, 1976, as amended at 47 FR 7213, Feb. 18, 1982; 48 FR 52701, Nov. 22, 1983]

§ 30.92 Statistical classification schedules.

The following statistical classification schedules referred to in the regulations in this part are hereby incorporated by reference. Information as to where copies may be obtained is indicated. Copies are available for public inspection at the offices of local Customs Directors and Department of Commerce District Offices.

TSUSA—Tariff Schedules of the United States Annotated for Statistical Reporting, as currently revised, shows the 7-digit statistical reporting number to be used in preparing import entries and withdrawal forms. TSUSA may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, local Customs Directors, or Department of Commerce District Offices located in principal cities. Purchase price includes the basic schedule plus revisions as currently issued for an indefinite period.

Schedule B—Statistical Classification of Domestic and Foreign Commodities Exported from the United States, as currently revised, shows the detailed commodity classification requirements and 7-digit statistical reporting numbers to be used in preparing Shipper's Export Declarations, as required by these regulations. Schedule B may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, local Customs Directors, or Department of Commerce District Offices located in principal cities. Purchase price includes the basic schedules and supplements issued irregularly, covering revision in the schedule for an indefinite period.

Schedule C-E—Classification of Country and Territory Designations for U.S. Export Statistics. Free from the Bureau of the Census, Washington, D.C. 20233.

Schedule C-I—Classification of Country and Territory Designations for U.S. Import Statistics. Free from the Bureau of the Census, Washington, D.C. 29233.

Schedule D—Classification of Customs Districts and Ports. Free from the Bureau of the Census, Washington, D.C. 20233.

(13 U.S.C. 302; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950; Department of Commerce Organization Order No. 35-2A, Aug. 4, 1975, 40 FR 42765)

[41 FR 9134, Mar. 3, 1976, as amended at 42 FR 59840, Nov. 22, 1977; 43 FR 56031, Nov. 30, 1978; 44 FR 1971, Jan. 9, 1979]

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§ 30.93 Emergency exceptions.

In individual cases of emergency, where strict enforcement of the regulations in this part would create undue hardship, the Foreign Trade Division of the Bureau of the Census, with the concurrence of the Office of Export Administration in cases where export control requirements are also involved, may authorize such postponements of or exceptions to the requirements of the regulation in this part as are warranted by the circumstances and not inconsistent with the aims of this chapter.

§ 30.94 Instructions to Customs.

Instructions of a continuing nature to Customs with respect to the forwarding of statistical copies of forms and the preparation of special statistical reports not involving requirements upon the public will not be included in the regulations in this part, but will, instead be transmitted to Customs through appropriate administrative channels.

§ 30.95 Penalties for violations.

Any person who violates any provisions of this part, except for violations of the provisions relating to delayed filing of documents under bond as provided by § 30.24, shall be liable to the United States in civil penalty not exceeding \$1,000 for each violation, as authorized by section 305 of Chapter 9 of Title 13 of the United States Code.

§ 30.99 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This subpart will comply with the requirements of section 3507(f) of the Paperwork Reduction Act (PRA) which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

15 CFR section where identified and described	Current OMB control no.
30.1 through 30.7.....	0607-0001, -0018, -0150, -0152
30.8.....	0607-0001
30.9 through 30.11.....	0607-0001, -0018, -0152
30.12 and 30.15.....	0607-0001, -0018, -0152

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15 CFR section where identified and described	Current OMB control no.
30.16.....	0607-0001, -0018, -0150, -0152
30.20 through 30.24.....	0607-0001, -0018, -0150, -0152
30.30 through 30.31.....	0607-0018, -0150, -0152
30.33 through 30.35 and 30.37.....	0607-0001, -0018, -0150, -0152
30.39.....	0607-0018, -0150, -0152
30.40, 30.41, and 30.50 through 30.53.....	0607-0001, -0018, -0150, -0152
30.54.....	0607-0018
30.55 through 30.57.....	0607-0001, -0018, -0150, -0152
30.82.....	0607-0018, -0152
30.91 through 30.95.....	0607-0001, -0018, -0150, -0152

[48 FR 56744, Dec. 23, 1983]

PART 40—TRAINING OF FOREIGN PARTICIPANTS IN CENSUS PROCEDURES AND GENERAL STATISTICS

Sec.

40.1 Type of grant.

40.2 Qualifications.

40.3 Cooperation with bilateral technical assistance programs of the United States.

40.4 Administrative provisions on selection of participants and funding of costs.

40.5 Other cooperative arrangements.

AUTHORITY: 5 U.S.C. 301; 22 U.S.C. 1456; 31 U.S.C. 686. Memorandum of Agreement between the Department of Commerce and the Foreign Operations Administration Concerning Foreign Technical Assistance Work, signed June 10, 1954.

SOURCE: 28 FR 119, Jan. 4, 1963, unless otherwise noted.

§ 40.1 Type of grant.

Training grants will be awarded by the Agency for International Development (AID), in its capacity as the bilateral technical assistance agency for the United States Government, to foreign participants for training, observation, and research in the fields of censuses and statistics at the Bureau of the Census. In compliance with the needs of the participants and consistent with resources of the Bureau, training programs will be developed along the lines of a combined interne-training and/or training-in research types, and may include any or all of the following:

(a) Conference courses designed to provide the trainee with adequate background information on (1) organization and administration of the

United States Bureau of the Census, (2) subject-matter areas for which the Bureau of the Census collects and compiles statistical information, (3) nature and scope of the major statistical programs maintained by other federal government agencies, (4) techniques and scope of the periodic censuses and statistical surveys, and statistical compilations undertaken by the Bureau of the Census, and (5) relation of censuses to other statistical data collected and analyzed by U.S. agencies.

(b) Seminars laboratory exercises and observation of work in the Census Bureau and other agencies with specific applicability to the participant such as (1) development of census and survey questionnaires, (2) methods of field and mail enumeration, (3) procedures for editing and coding statistical forms, (4) use of office machines, electromechanical tabulation equipment, and automatic data processing systems for mass processing of statistical data, (5) definitions and scope of the subject matters involved in the censuses and statistical programs of the Bureau of the Census, (6) classification of industrial and business establishments, (7) classification of imports and exports, (8) techniques of making intercensal estimates of population, (9) sampling techniques and quality control procedures, (10) analyses and publication of data, and development of certain indexes; and (11) other topics, particularly in the development of new statistical programs and techniques.

(c) Formal courses at a college or university to supplement the seminars, conference-courses, and individual statistical projects developed, presented, or assigned by the Bureau; or enrolled on a full-time basis in a college or university to obtain the appropriate academic background for further work in the field of statistics in accordance with needs of participants and/or the program requirements of their countries.

(d) Observation trips to various academic institutions with recognized statistical activities, to private marketing and research agencies, to regional field offices of the Bureau, to the government statistical agencies of Canada, and to such activities that will supple-

ment or illustrate the application and end use of statistical data.

(e) Case study workshops on selected census and statistical activities presented at the Bureau, in other locations in the United States, or outside the continental limits of the United States.

(f) Such field training, special research, or university program as appears advisable to the Director of the Bureau of the Census in accordance with the technical needs of the participants.

§ 40.2 Qualifications.

(a) To be eligible for a training grant at the Bureau of the Census the applicant must be:

(1) A bona-fide citizen of a country with whom the United States has proper diplomatic arrangements for such training programs.

(2) Able to speak, read, write, and understand the English language.

(3) Sponsored by his government either directly with the United States or through a public international agency.

(4) Physically able to undertake the activities incident to the course of training and free from communicable diseases.

§ 40.3 Cooperation with bilateral technical assistance programs of the United States.

In compliance with the provisions contained in the Memorandum of Agreement executed between the Department of Commerce and the Foreign Operations Administration (now AID) on June 10, 1954, the Bureau of the Census is authorized within its areas of competence and available resources to continue its training of foreign nationals under the general guidance of the Department of Commerce and in cooperation with the bilateral technical assistance programs of the United States Government.

§ 40.4 Administrative provisions on selection of participants and funding of costs.

(a) Within the framework of the aforementioned Memorandum of Agreement, the Bureau of the Census

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will arrange at the request and expense of the Agency for International Development, a program for technical training of foreign participants in censuses and statistics. The Bureau of the Census will be furnished biographic materials, information about the training objectives including, where appropriate, each participant's education and experience, type of training desired, present and future positions with descriptions of duties, and the terms of the training project for each participant or group as far in advance of his arrival in the United States as possible.

(b) The Bureau reserves the right to accept, based on biographical information to be furnished in advance, only those participants whom it finds qualified to make satisfactory use of its training facilities and resources. The Bureau would prefer to develop programs for foreign participants with substantive experience in the statistical activities of their home country.

(c) Arrangements for security clearances, insurance, orientation, international travel, housing, and other administrative responsibilities will be the responsibility of AID under the provisions of the Memorandum of Agreement (Reference: Appendix II, Training of Foreign Nationals).

§ 40.5 Other cooperative arrangements.

The Bureau of the Census also undertakes the training of foreign nationals proposed through the Department of State under the International Exchange Service (IES) or under the sponsorship of public international agencies.

PART 50—SPECIAL SERVICES AND STUDIES BY THE BUREAU OF THE CENSUS

Sec.

50.1 General.

50.5 Fee structure for age search and citizenship information.

50.10 Fee structure for special population censuses.

50.30 Fee structure for foreign trade and shipping statistics.

50.40 Fee structure for statistics for city blocks in the 1980 Censuses of Population and Housing.

15 CFR Ch. I (1-1-36 Edition)

AUTHORITY: Sec. 3, 49 Stat. 293, as amended; 15 U.S.C. 192a. Interprets or applies sec. 1, 40 Stat. 1256, as amended, sec. 1, 49 Stat. 292, sec. 8, 60 Stat. 1013, as amended, 15 U.S.C. 192, 189a, 13 U.S.C. 8, unless otherwise noted.

SOURCE: 28 FR 120, Jan. 4, 1963, unless otherwise noted.

§ 50.1 General.

(a) Fee structure for age search and citizenship service, special population censuses, and for foreign trade and shipping statistics.

(b) In accordance with the provisions of the acts authorizing the Department of Commerce to make special statistical surveys and studies, and to perform other specified services upon the payment of the cost thereof, the following fee structure is hereby established. No transcript of any record will be furnished under authority of these acts which would violate existing or future acts requiring that information furnished be held confidential.

(c) Requests for age search and citizenship service should be addressed to the Personal Census Service Branch, Bureau of the Census, Pittsburgh, KS 66762. Application forms may be obtained at Department of Commerce field offices or Social Security offices or by writing to the Pittsburgh, Kansas, office.

(d) If a search is unsuccessful and additional information for a further search is requested by the Bureau, such information must be received within 120 days of the request or the case will be considered closed. Additional information received after 120 days must be accompanied by a new fee and will be considered as a new request.

(15 U.S.C. 1526 and 13 U.S.C. 8)

[36 FR 905, Jan. 20, 1971, as amended at 49 FR 3980, Feb. 1, 1984]

§ 50.5 Fee structure for age search and citizenship information.

Type of service	Fee
Searches of not more than two censuses for one person and one transcript of the more appropriate record.....	\$15
Each additional copy of census transcript.....	2

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Type of service	Fee
Each full schedule (entire household) requested	4

NOTE: The \$4.00 for each full schedule requested is in addition to the fee increase to \$15.00.

[50 FR 23404, June 24, 1985]

§ 50.10 Fee structure for special population censuses.

The Bureau of the Census is authorized to conduct special population censuses at the request of and at the expense of the community concerned. To obtain a special population census, an authorized official of the community should write a letter to the Associate Director for Demographic Fields, Bureau of the Census, Washington, D.C. 20233, requesting detailed information and stating the approximate present population. The Associate Director will reply giving an estimate of the cost and other pertinent information. Title 13, United State Code, section 196, Special Censuses, requires payment to the Bureau of the actual or estimated cost of each such special census.

[47 FR 18, Jan. 4, 1982]

§ 50.30 Fee structure for foreign trade and shipping statistics.

(a) The Bureau of the Census is willing to furnish on a cost basis foreign trade and shipping statistics provided there is no serious interruption of the Bureau's regular work program.

(b) In instances where information requested is not shown separately or not summarized in the form desired, it is necessary to conduct a preliminary investigation at the requestor's expense to determine whether the information can be compiled from the basic records and what the total cost will be. The preliminary investigation normally costs \$250 but may be more depending on the circumstances. The total cost of the final report generally ranges from \$500 to several thousand dollars for data covering a 12-month period.

(c) Upon receipt of a request, information will be furnished as to whether the statistics are available and if so, the cost; or that a preliminary investigation must be conducted. When an investigation is completed, informa-

tion will be furnished as to the cost of preparing the material, or as to the reason if the statistics cannot be compiled from our basic records.

(15 U.S.C. 1526 and 13 U.S.C. 8)

[28 FR 120, Jan. 4, 1963, as amended at 49 FR 3980, Feb. 1, 1984]

§ 50.40 Fee structure for statistics for city blocks in the 1980 Census of Population and Housing.

(a) As part of the regular program of the 1980 census, the Census Bureau will publish printed reports containing certain summary population and housing statistics for each city block, drawn from the subjects which are being covered on a 100-percent basis. For these subjects, a substantial amount of additional data by block will be available on computer tape.

(b) The 1980 block data under the regular program will be prepared for:

(1) Each urbanized area in the United States. An urbanized area is delineated by the Census Bureau in each standard metropolitan statistical area and generally consists of a city or group of contiguous cities with a 1970 population of 50,000 or more; together with adjacent densely populated land (i.e., land having a population density of at least 1,000 persons per square mile).

(2) And, outside urbanized areas, for each incorporated place (such as a city or village) that was reported as having 10,000 or more inhabitants in:

(i) The 1970 census, or

(ii) The 1973, 1975, or 1976 official population estimates published by the Bureau, or

(iii) A special census conducted by the Bureau on or before December 31, 1977.

(c) Outside the above-mentioned urbanized areas and places, State and local government authorities will be able to contract with the Bureau of the Census to produce block data for their areas. In undertaking this contract, the requesting authority will be required to pay a fee, supply certain maps, and meet certain time deadlines as follows:

(1) Fee: (i) Population size:

	Fee per area
Under 2,500.....	\$500
2,500 to 4,999.....	800
5,000 to 9,999.....	700

(ii) The final fee will be based upon the 1980 census population counts. A refund or additional charge will be made if the contracting area is in a different population size group as a result of the census.

(iii) The cost for an area with a population of 10,000 or more will be determined on an individual basis.

(iv) Multiple area contracts may be negotiated at a savings.

(v) The fee is based on estimated 1980 costs. If the 1980 cost exceeds the estimated cost, an additional fee may be requested from the contracting area. If actual costs are less than the estimated cost, a refund may be made.

(vi) Any incorporated place which contracts for block statistics and which reaches a population of 10,000 or more in the 1980 census will have the fee completely refunded, as the place will then be considered to be part of the regular block statistics program.

(vii) If the area submits maps which are not adequate for the Bureau's purposes (see Maps, below) and therefore have to be redrafted by the Bureau, a surcharge of \$300 per map sheet requiring revision will be applied to the fee for the particular area.

(2) *Maps:* (i) In order for the Bureau to provide data on a block-by-block basis, it must have a map which clearly delineates each block. The contracting government authority must supply such maps. A copy of the specifications for preparing the block maps will be provided upon request and, in any event, will accompany the copy of the contract which is sent to the government authority for signature.

(ii) The maps must be furnished to the Census Bureau within 30 calendar days after the government authority signs the contract.

(iii) The Bureau will review the maps and, if revision is necessary, return them within 30 calendar days to the government authority.

(iv) Within 30 calendar days thereafter, the revised maps must be trans-

mitted to the Bureau and, if they are still inadequate and must therefore be redrafted by the Bureau, the above-mentioned surcharge of \$300 per map sheet requiring revision will be imposed.

(3) *Timing:* (i) The contract must be signed, and a downpayment of \$250 per area made, by April 1, 1978. A check or money order should be made payable to — Commerce—Census."

(ii) If an area decides to withdraw after signing a contract and making a downpayment, the cost of work performed to date will be deducted from the refund.

(iii) The balance of the fee must be mailed to the Bureau by January 1, 1980.

(d) In consideration of the fees paid and maps supplied, the Bureau will:

(1) Identify the individual blocks in its records and tabulations.

(2) Make available the block data for the particular area in the same manner as for areas in the regular block statistics program (i.e., both in terms of printed reports and computer summary tapes). Two copies of the printed report (including the printed maps) which contain the block statistics for the particular area will be furnished to the contracting government authority.

(e) Requests for participation in the contract block statistics program or for further information should be addressed to the Director, Bureau of the Census, Washington, D.C. 20233.

[43 FR 3903, Jan. 30, 1978; 43 FR 59835, Dec. 22, 1978]

PART 60—PUBLIC INFORMATION

Sec.

60.1 Scope and purpose.

60.2 Policies.

60.3 Definitions.

60.4 Publication in the FEDERAL REGISTER.

60.5 Availability of materials for inspection and copying.

60.6 Confidentiality of data collected by the Bureau of the Census.

60.7 Requests for records.

60.8 Initial determinations of availability of records.

60.9 Appeals from initial denials or untimely delays.

60.10 Fees.

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60.11 Arrangements for public inspection and copying of available records.

AUTHORITY: 5 U.S.C. 552, as amended by Pub. L. 93-502; 5 U.S.C. 553; 5 U.S.C. 301; 40 FR 11551; 40 FR 19810.

SOURCE: 41 FR 3466, Jan. 23, 1976, unless otherwise noted.

§ 60.1 Scope and purpose.

(a) This part revises the rules whereby the Bureau of the Census is to make publicly available the materials and indexes specified in 5 U.S.C. 552(a)(2), and the records requested under 5 U.S.C. 552(a)(3). This revision is to conform the rules to the requirements of the Freedom of Information Act (5 U.S.C. 552), as amended by Pub. L. 93-502, 88 Stat. 1561, effective February 19, 1975.

(b) These rules supplement Department Administrative Order 205-12, which contains policies, delegations of authority, and other rules implementing 5 U.S.C. 502. These rules also supplement the rules published on March 12, 1975, by the Department of Commerce (40 FR 11551).

§ 60.2 Policies.

(a) Policies and other factors to be considered in issuing the rules in this part are set forth in Department Administrative Order 205-12.

(b) Requests for records made under 5 U.S.C. 552(a)(3) apply only to existing records, and the Bureau is not required, in response to a request, to create records by combining or compiling information contained in existing records, or otherwise to prepare new records. However, Bureau officials may, upon request, provide or create new information in record form pursuant to user charge statutes, such as 15 U.S.C. 1525-1527, or in accord with authority otherwise provided by law.

§ 60.3 Definitions.

(a) To the extent that terms used in this part are defined in 5 U.S.C. 551, they shall have the same definition herein.

(b) As used in this part, "Act" means the "Freedom of Information Act," as amended, 5 U.S.C. 552.

§ 60.4 Publication in the FEDERAL REGISTER.

(a) Materials required to be published pursuant to the provisions of 5 U.S.C. 552(a)(1) have been and shall continue to be so published, in one of the following ways:

(1) By publication in the FEDERAL REGISTER of the Department Orders of the Department of Commerce, including any supplements and appendices thereto, and of appropriate Secretary of Commerce Circulars and Department Administrative Orders;

(2) By publication in the FEDERAL REGISTER of agency rules and regulations, and by their subsequent inclusion in the Code of Federal Regulations;

(3) By publication in the FEDERAL REGISTER of appropriate general notices; and

(4) By other forms of publication, when incorporated by reference in the FEDERAL REGISTER with the approval of the Director of the Federal Register.

(b) Those materials which are published in the FEDERAL REGISTER pursuant to 5 U.S.C. 552(a)(1) shall, to the extent practicable and to further assist the public, be made available for inspection and copying at the facility identified in § 60.5(c).

§ 60.5 Availability of materials for inspection and copying.

(a) The Director, Bureau of the Census shall, as provided in 5 U.S.C. 552(a)(2) and subject to other provisions of law, establish and maintain a reference facility for the public inspection and copying of:

(1) Final opinions, including concurring and dissenting opinions, as well as order, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the Bureau and are not published in the FEDERAL REGISTER;

(3) Administrative staff manuals and instructions to staff that affect a member of the public;

(4) Current indexes providing identifying information for the public as to any matter which is (i) issued, adopted, or promulgated after July 4, 1967,

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and (ii) required to be made available or published by section 552(a)(2);

(5) Records of the final votes of each member in every proceeding of any agency comprised of more than one member;

(6) Rules and decisions denying requests for records which otherwise implement or relate to the Act; and

(7) Materials published in the FEDERAL REGISTER pursuant to 5 U.S.C. 552(a)(1) and such other materials which each unit may consider desirable and practical to make available for the convenience of the public.

(b) The Bureau may, to prevent unwarranted invasion of personal privacy, delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction, and shall, in each such case, explain in writing the justification for the deletion.

(c) The Secretary of Commerce has determined (DAO 205-12, subparagraph 5.02a.5.) that it is unnecessary and impracticable to publish quarterly or more frequently and distribute (by sale or otherwise) copies of each index and supplements thereto, as provided in 5 U.S.C. 552(a)(2). Upon request, copies of such indexes shall be provided at the public reference facility at a cost not to exceed the direct cost of duplication.

(d) The above materials may be inspected in the Census Freedom of Information Records Inspection Facility located at the Library Branch, Room 2455, Federal Building 3, Bureau of the Census, Washington, D.C. 20233 (Suitland, Maryland). This facility is open to the public Monday through Friday of each week, except on official Federal holidays, between the hours of 9:00 a.m. and 4:30 p.m. There are no fees or formal requirements for such inspections. Upon request, however, the facility will arrange to have copies of the above materials made at the cost shown in § 60.10.

(e) Correspondence concerning the materials available in the facility should be sent to the above address. The telephone number of the facility is 763-5040, Area Code 301.

15 CFR Ch. I (1-1-86 Edition)

§ 60.6 Confidentiality of data collected by the Bureau of the Census.

(a) The Bureau of the Census is required by law to keep certain records confidential. Protection against unauthorized disclosures is provided by title 13, U.S.C.

§ 60.7 Requests for records.

(a) The procedures of this section are applicable only to those records not customarily available to the public as part of the regular informational activities of the Bureau or which are not available in the Census reference facility described in § 60.5. The procedures and fees generally do not apply to applications for personal census information. Applications for personal census information should be directed to the Bureau's Personal Census Service Branch at Walnut and Pine Streets, Pittsburg, Kansas 66762.

(b) A person who wishes to inspect records described in section 607(a) shall make a request in writing, with the envelope and letter clearly marked "Freedom of Information Desk" or "Freedom of Information Request" or the equivalent, to distinguish it from other mail to the Department. Each such request, so marked, shall be addressed to Associate Director for Administration, Bureau of the Census, Attention: Freedom of Information Desk, Washington, D.C. 20233.

(c) A request which is not addressed as described in § 60.7(a) and which is not routed through the Department's Central Facility, will not be deemed to have "received" for purposes of the time period for a request for records set forth in 5 U.S.C. 552(a)(6), until the earlier of the time that (1) forwarding of the request to the responsible unit has been effected, or (2) such forwarding would have been effected with the exercise of due diligence by Bureau personnel. In each instance when a request is forwarded, the Bureau of the Census shall notify the requester that his request was improperly addressed and the date the request was received by Census.

(d) A request for records shall sufficiently identify the records requested to enable Census personnel familiar with the subject matter to locate them

with a reasonable amount of effort. The requester shall, to the extent possible, furnish specific descriptive information regarding dates and places the records were made, the file descriptions, subject matter, persons involved, and other pertinent details that will help identify the records. If the request relates to a matter in pending litigation, the court, location and case shall be identified. When more than one record is requested, the request shall clearly describe each specific record, and the specific information requested which is contained in a record, so that its availability may be separately determined. Employees at the Census reference facility described in § 60.5 will assist the public to a reasonable extent in framing a request.

§ 60.8 Initial determinations of availability of records.

(a) Whenever the Bureau of the Census receives a request for records it shall promptly log the receipt of the request, and within 10 days of its receipt (excepting Saturdays, Sundays and legal public holidays) shall initially determine:

(1) Whether the request is for records under the Act, is for materials available otherwise than under the Act, or is for information not contained in existing records, and, therefore, not under the Act.

(2) Whether the records requested are reasonably described and can be located on the basis of the information furnished, the Bureau shall promptly so inform the requestor in writing, specifying what additional identification is needed to assist the Bureau in locating the record, and offering to assist the requestor to reformulate his request.

(3) Whether the records no longer exist or are not in the Bureau's possession. The Bureau shall, if it knows which unit of the Department or other agency may have the records, forward the request to it. In each instance, the Bureau shall promptly notify the requestor in writing.

(4) Whether the requested records are the exclusive or primary concern of another executive agency. If so, the Bureau shall promptly refer to request to that other agency for further

action under its rules, and promptly notify the requestor in writing of this referral.

(5) Whether the request is a categorical one. A categorical request; i.e., one for all records falling within a reasonably specific but broad category, shall be regarded as conforming to the statutory requirement that records be reasonably described, if the particular records can be identified, searched for, collected and produced without unduly burdening or disrupting the Bureau's operations. If the categorical request does not reasonably describe the records requested, the Bureau shall promptly notify the requester in writing specifying what additional identification is needed, and extend to the requester an opportunity to confer with Bureau personnel to attempt to reformulate the request so as reasonably to describe the records.

(6) In each of the situations set forth in paragraphs (a) and (b) of this section, the procedures relating to fees described in § 60.10 shall also be applied and coordinated as appropriate.

(b) An official having custody of the records requested in the Bureau of the Census shall review the request to determine the availability of the records requested.

(1) The determination shall be made within 10 days (excepting Saturdays, Sundays and legal public holidays) of the receipt of the request (as defined in § 60.7(c)), unless the time is extended as provided in paragraph (b)(2) of this section.

(2) In unusual circumstances, the Associate Director for Administration may extend the time for initial determination for up to 10 days (excluding Saturdays, Sundays and legal public holidays) by written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. Extensions of time for the initial determination and extensions of time on appeal may not exceed a total of 10 days, and time taken for the former counts against available appeal extension time. "Unusual circumstances" means, but only to the extent reasonably necessary to the processing of a particular request:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practical speed, with another agency or unit having a substantial interest in the determination of the request, or among two or more components of the Bureau having substantial subject-matter interest therein.

(3) If no determination has been sent to the requester at the end of the initial 10-day period, or the last extension thereof, the requester may deem his request to be initially denied, and exercise a right of appeal therefrom. When no determination can be made within the applicable time period, the Bureau shall nevertheless exercise due diligence in continuing to process the request. It shall, on expiration of the applicable time period, inform the requester of the reason for the delay, of the date a determination is expected to be sent, and of the requester's right to treat the delay as a denial and to appeal therefrom. It may ask the requester to forego an appeal until a determination is made.

(4) If it is determined that the records requested are to be made available, and there are no further fees to be paid, the responsible official shall promptly notify the requester as to where and when the requested records or copies may be obtained or otherwise provide them as agreed. If there are fees still to be paid by the requester, he shall be notified that upon payment the records will immediately be made available.

(5) Only the Associate Director for Administration has been authorized to make initial denials of requests for records. A reply initially denying, in whole or in part, a request for records shall be in writing, signed by the Associate Director for Administration and it shall include:

(i) A reference to the specific exemption or exemptions of the Act author-

izing the withholding of the records, stating briefly why the exemption applies and, where relevant, why a discretionary release is not appropriate.

(ii) The name and title or position of each official responsible for the denial.

(iii) A statement of the manner in which any reasonably segregable portion of a record shall be provided to the requester after deletion of the portions which are determined to be exempt.

(iv) A brief statement to the right of the requester to appeal the determination, and the address to which the appeal should be sent, in accord with § 60.9(a) and (b).

(6) The Office of the General Counsel of the Department shall be consulted before an initial denial of a request for records is issued and a copy of each initial denial shall be provided to the Assistant General Counsel for Administration of the Department of Commerce.

§ 60.9 Appeals from initial denials or untimely delays.

(a) When a request for records has been initially denied in whole or in part, or has not been timely determined, the requester may submit a written appeal within 30-calendar days after the date of the written denial or, if there has been no determination, on the last day of the applicable time limit. The appeal shall include a copy of the original requests, the initial denial, if any, and a statement of the reasons why the records requested should be made available and why the initial denial, if any, was in error. No personal appearance, oral argument or hearing on appeal is provided.

(b) An appeal shall be addressed to the Director, Bureau of the Census, Washington, D.C. 20233. Both the appeal envelope and the letter shall be clearly marked "Freedom of Information Appeal" or "Appeal for records" or the equivalent. An appeal not addressed and marked as provided herein will be so marked by the Bureau personnel when it is so identified, and will be forwarded immediately to the proper addressee. An appeal incorrectly addressed will not be deemed to

have been "received" for poses of the time period for appeal set forth in 5 U.S.C. 552(a)(6), until the earlier of the time that (1) forwarding to the Director has been effected, or (2) such forwarding would have been effected with the exercise of due diligence by Bureau personnel. In each instance when an appeal is so forwarded, the Director shall notify the requester that the appeal was improperly addressed and of the date the appeal was received by that official.

(c) The Director, Bureau of the Census, shall act upon an appeal within 20 days (excluding Saturdays, Sundays and legal public holidays) of its receipt, unless an extension of time is made in unusual circumstances, when the time for action may be extended up to 10 days (excluding Saturdays, Sundays and legal public holidays) minus any days of extension granted at the initial request level. A notice of such extension shall be sent to the requester, setting forth the reasons and the date on which a determination of the appeal is expected to be sent. As used in this paragraph, "unusual circumstances" are defined in § 60.8(b)(2).

(d) If a decision on appeal is to make the records available to the requester in part or in whole such records shall be promptly made available for inspection and copying as provided in § 60.5.

(e) If no determination of an appeal has been sent to the requester within the 20-day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies with respect to such request, giving rise to a right of judicial review as specified in 5 U.S.C. 552(e)(4). When no determination can be sent to the requester within the applicable time limit, the Director shall nonetheless exercise due diligence in continuing to process the appeal. When the time limit expires, the requester shall be informed of the reason for the delay, of the date when a determination may be expected to be made, and his right to seek judicial review. The requester may be asked to forego judicial review until the appeal is determined.

(f) A determination on appeal shall be in writing and, when it denies

records in whole or in part, the notice to the requester shall include:

(1) Notation of the specific exemption or exemptions of the Act authorizing the withholding, a brief explanation of how the exemption applies, and, when relevant, a statement as to why a discretionary release is not appropriate;

(2) A statement that the decision is final for the Bureau and for the Department of Commerce;

(3) Advice that judicial review of the denial is available in the district in which the requester resides or has his principal place of business, the district in which the agency records are situated, or the District of Columbia; and

(4) The names and titles or positions of each official responsible for the denial of the request.

(g) No final denial may be issued without (1) consulting with the Office of the Special Assistant to the Secretary for Public Affairs, and (2) concurrence of the Office of the General Counsel of the Department.

(h) Final appeal decisions shall be indexed and kept available for public inspection and copying. Copies shall be sent to the Department's Assistant Secretary for Administration and Assistant General Counsel for Administration.

§ 60.10 Fees.

A uniform schedule of fees and procedures for collecting fees for the U.S. Department of Commerce has been promulgated and is published in 15 CFR 4.9, and applies to all requests for Bureau of the Census records made under the Freedom of Information Act.

§ 60.11 Arrangements for public inspection and copying of available records.

(a) Upon receipt of the records search fee, and any fees for additional services requested by the applicant, the requested record which has been determined to be available shall, unless the applicant has otherwise indicated, be transferred to the Census reference facility, where it will be held for inspection by the applicant for a reasonable time. The address, and hours of operation, of this facility are

stated in § 60.5(d). A reasonable time shall generally be considered to be not less than one week or more than three weeks. In the event the requester does not review the records within this time, they shall be refilled and paragraph (e) of this section will apply.

(b) In the event that disclosable records are required for the conduct of the daily business of the Bureau during the time when they would otherwise be available in the facility, the requester shall be so notified at the time it is determined that the records are to be made available in the Census facility for inspection. If the requester does not appear at the appointed time, the records shall be refilled and paragraph (e) of this section will apply.

(c) During inspection of the record at the facility, the applicant may copy by hand any portion of the record, may request the facility to make a copy thereof, and may obtain certification of a machine-copied record in accordance with the fee structure in § 60.10.

(d) No changes or alterations of any type may be made to the record being inspected, nor may any matter be added to or subtracted therefrom. Papers bound or otherwise assembled in a record file may not be dissembled during inspection. Staff of the facility shall provide assistance if disassembly of a record is necessary for copying purposes, and are authorized to supervise public inspection as necessary to protect the records of the Bureau. The public is reminded of Title 18, United States Code, section 2701(a), which makes it a crime to conceal, remove, mutilate, obliterate, or destroy any record filed in any public office, or to attempt to do any of the foregoing.

(e) If the records are not reviewed as outlined in paragraph (a) or (b) of this section they will not be made available again for inspection until the following requirements are met:

(1) All monies due on the first request have been remitted; (2) any estimated fee for a second search is paid; (3) the requester initiates and confirms a specific appointment time.

(f) If an applicant does not want to inspect a record by personal visit, he may request that a copy thereof be mailed to him, upon payment of the

copying and postage fees set forth in § 60.10. Original copies of records shall not be sent to any location other than the reference facility for public inspection pursuant to 5 U.S.C. 552(a)(3).

PART 70—CUTOFF DATES FOR RECOGNITION OF BOUNDARY CHANGES FOR THE 1980 CENSUS

Sec.

70.1 Cutoff dates and effect on enumeration and data tabulation.

70.2 "Municipality" and "county subdivision" defined for census purposes.

70.3 Effect of boundary changes occurring or reported after the cutoff dates.

AUTHORITY: 13 U.S.C. 4; 32 FR 15154; and Department of Commerce Organization Order 35-2A (40 FR 42765).

SOURCE: 42 FR 38901, Aug. 1, 1977, unless otherwise noted.

§ 70.1 Cutoff dates and effect on enumeration and data tabulation.

For the tabulation and publication of data from the 1980 Census of Population and Housing, the Bureau of the Census will recognize only those boundaries that are legally in effect on January 1, 1980 and have been officially reported to the Bureau no later than March 1, 1980. Respondents will be enumerated on the decennial census date as residing within the legal limits of municipalities, county subdivisions, counties, States, and equivalent areas as those limits exist on January 1, 1980.

§ 70.2 "Municipality" and "county subdivision" defined for census purposes.

For the purposes of this part, "municipalities" and "county subdivisions" are defined to include the areas identified by the Bureau of the Census as incorporated places (such as cities and villages) and minor civil divisions (such as townships and magisterial districts). A more complete description appears on pages X and XI of U.S. "Census of Population: 1970", Volume I, Part A.

§ 70.3 Effect of boundary changes occurring or reported after the cutoff dates.

Changes in boundaries that become effective after January 1, 1980, will not be recognized by the Bureau of

the Census in taking the 1980 Decennial Census; the residents of any area which is transferred to another jurisdiction after that date will be enumerated in and reported by the 1980 census as residents of the area in which their residences were located on January 1, 1980. Changes occurring on or before January 1, 1980, but not officially submitted to the Bureau of the Census until after March 1, 1980, will not be recognized in the data tabulations prepared for the 1980 census except as necessary by the Bureau for its decennial census operations; only population counts will be reported for such areas.

PART 80—FURNISHING PERSONAL CENSUS DATA FROM CENSUS OF POPULATION SCHEDULES

Sec.

80.1 General requirements.

80.2 Rules pertaining to records of the living.

80.3 Rules applicable to deceased persons and estates.

80.4 Signatures of persons unable to sign their name.

80.5 Detrimental use of information.

80.6 False statements.

AUTHORITY: Sec. 1, Pub. L. 83-1158, 68 Stat. 1013 (13 U.S.C. 8).

§ 80.1 General requirements.

(a) Data from records of decennial census of population questionnaires pertaining to an individual will be released only in accordance with these rules.

(b) Census information contains only the responses recorded by the Census enumerator; no changes of any of these entries have been or can be made.

(c) Requests for information from decennial census of population records (herein "Census information") should be made on Form BC-600, which is available from offices of the Bureau of the Census at Suitland, Maryland 20233 and Pittsburg, Kansas 66762, all county courthouses, Social Security field offices, and Immigration and Naturalization Service offices. A letter request—without Form BC-600—will be accepted only if it contains the information necessary to complete a Form BC-600. No application will be

processed without payment of the required fee as set forth in 15 CFR 50.5.

(d) The Bureau may require verification of the identity of the applicant requesting Census information and it may require the applicant to submit the following notarized statement:

I, _____ (Printed name), do hereby certify that I am the individual to whom the requested record pertains or that I am within the class of persons authorized to act on his behalf in accordance with 15 CFR, Part 80.

(Signature) _____

(Date) _____

In the County of _____

State of _____

On this _____ day of _____, 19____,

_____ (Name of individual)

who is personally known to me, did appear before me and sign the above certificate.

(Signature) _____

(Date) _____

(S) My commission expires _____

(e) Except as otherwise provided, Census information will be provided only to the individual to whom the record pertains. It will include the names of the subject and the head of the household, the relationship of the subject to the head of the household, and the subject's age and birthplace.

(f) Similar Census information pertaining to other members of a household will be furnished only upon written authorization of the individual whose record is requested, except as provided in § 80.3.

(g) Census information may be provided to others only upon signed request by an individual entitled to receive the information which indicates the person and address to which the information is to be sent.

(Approved by the Office of Management and Budget under control number 0607-0117)

[40 FR 53232, Nov. 17, 1975, as amended at 46 FR 56744, Dec. 23, 1983]

§ 80.2 Rules pertaining to records of the living.

(a) An individual who has attained age 18 may request his or her own Census information.

(b) A parent may request Census information for and in behalf of a child who has not reached age 18. The re-

§ 80.3

quest must be signed by one of the parents.

(c) A legal guardian may obtain Census information relating to a ward by submitting a certified copy of the order of guardianship appointment.

(Approved by the Office of Management and Budget under control number 0607-0117)

[40 FR 53232, Nov. 17, 1975, as amended at 48 FR 56744, Dec. 23, 1983]

§ 80.3 Rules applicable to deceased persons and estates.

(a) Census information relating to a deceased person may be released only to a parent, child, grandchild, brother, sister, spouse, insurance beneficiary, or the executor or administrator of a deceased person's estate. The request must be signed by a person entitled to receive the information as provided herein, state the relationship of the applicant to the deceased, and include a certified copy of the death certificate or other adequate proof of death. The request of an executor or administrator must be accompanied by a certified copy of the court order of appointment.

(b) Except for a spouse, a person related to the deceased person through marriage, such as an in-law relationship, is not eligible to request Census information on the deceased, whether or not the applicant was a member of the household of the deceased.

(Approved by the Office of Management and Budget under control number 0607-0117)

[40 FR 53232, Nov. 17, 1975, as amended at 48 FR 56744, Dec. 23, 1983]

§ 80.4 Signature of persons unable to sign their name.

A person requesting Census information who is unable to sign his or her name shall make an "X" mark where signature is required, and the mark must be witnessed by two persons who know the applicant. They must also sign the application certifying the applicant's identity. In the case of such persons who are unable to make an "X" mark, Census information can be released upon receipt of a physician's sworn statement verifying the disability and the written request of a

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parent, brother, sister, child or a spouse.

(Approved by the Office of Management and Budget under control number 0607-0117)

[40 FR 53232, Nov. 17, 1975, as amended at 48 FR 56744, Dec. 23, 1983]

§ 80.5 Detrimental use of information.

Section 8 of Title 13, United States Code requires that,

In no case shall information furnished under the authority of this section be used to the detriment of the persons to whom such information relates.

[40 FR 53232, Nov. 17, 1975]

§ 80.6 False statements.

Any false statement or forgery on the application or supporting papers required to obtain Census information is punishable by a fine and/or imprisonment pursuant to section 1001 of Title 18 of the United States Code.

(Approved by the Office of Management and Budget under control number 0607-0117)

[40 FR 53232, Nov. 17, 1975, as amended at 48 FR 56744, Dec. 23, 1983]

PART 90—PROCEDURE FOR CHALLENGING CERTAIN POPULATION AND INCOME ESTIMATES

Sec.

- 90.1 Scope and applicability.
- 90.2 Policy of the Bureau of the Census.
- 90.3 Definitions.
- 90.4 General.
- 90.5 When an informal challenge may be filed.
- 90.6 Where to file challenge.
- 90.7 Evidence required.
- 90.8 Review of challenge.
- 90.9 When formal procedure may be invoked.
- 90.10 Form of formal challenge and time limit for filing.
- 90.11 Appointment of hearing officer.
- 90.12 Qualifications of hearing officer.
- 90.13 Offer of hearing.
- 90.14 Hearing.
- 90.15 Decision by Director.
- 90.16 Notification of adjustment.
- 90.17 Timing for hearing and decision.
- 90.18 Representation.

AUTHORITY: 13 U.S.C. 4 and 181.

SOURCE: 44 FR 20647, Apr. 6, 1979, unless otherwise noted.

§ 90.1 Scope and applicability.

These rules prescribe the administrative procedure available to States and units of local government to challenge the current estimates of population or per capita income developed by the Bureau of the Census.

§ 90.2 Policy of the Bureau of the Census.

It is the policy of the Bureau of the Census to provide the most accurate population and per capita income estimates possible given the constraints of time, money, and available statistical techniques. It is also the policy of the Bureau to provide States and units of local government the opportunity to challenge these estimates and to present probative evidence relating to the accuracy of the estimates.

§ 90.3 Definitions.

As used in this part (except where the context clearly indicates otherwise) the following definitions shall apply:

(a) "Bureau" means the Bureau of the Census, Department of Commerce.

(b) "Challenge" means, in accordance with this part, the process of objecting to or calling into question the Bureau's population or per capita income estimates of a State or unit of local government by that State or unit of local government. A demand for adjustment to the General Revenue Sharing Act, Pub. L. 92-512, section 102(b), as amended (31 U.S.C. 1222(b)) does not constitute a challenge within the meaning of this part.

(c) "Director" means Director of the Bureau of the Census, or an individual designated by the Director to perform under this part.

(d) "Estimate" means a statistically derived intercensal population or per capita income figure prepared to update earlier census figures.

(e) "State" includes the District of Columbia.

(f) "Unit of local government" means the government of a county, municipality, township, place, or other minor civil division, which is a unit of general government below the State.

§ 90.4 General.

This part provides a procedure for a State or unit of local government to

challenge the population or per capita income estimates of the Bureau. The Bureau shall receive these challenges and attempt to resolve them informally with the locality. If the challenge is not resolved informally, the challenging State or unit of local government may then, at its option, proceed formally.

§ 90.5 When an informal challenge may be filed.

An informal challenge to the population or per capita income estimates may be filed any time up to 180 days after the release of the estimates by the Bureau of the Census. Publication by the Bureau of the Census and simultaneous publication of a release notification in the *FEDERAL REGISTER* shall constitute release. A challenge to any estimate may also be filed any time up to 180 days from the date the Census Bureau, on its own initiative, revises that estimate.

If, however, a state or unit of local government has sufficiently meritorious reason for not filing in a timely manner, the Census Bureau has the discretion to accept the challenge.

[50 FR 28768, July 16, 1985]

§ 90.6 Where to file challenge.

A challenge must be prepared in writing by the unit of government and is to be filed with the Chief, Population Division, Bureau of the Census, Room 2011, Federal Building 3, Washington, D.C. 20233.

§ 90.7 Evidence required.

The challenging State or unit of local government shall provide whatever evidence it has relative to the challenge at the time the challenge is filed. The Bureau may request further evidence.

§ 90.8 Review of challenge.

The Chief, Population Division, Bureau of the Census, or the Chief's designee shall review the challenge and the evidence supporting the challenge and shall attempt to resolve the challenge.

§ 90.9

§ 90.9 When formal procedure may be invoked.

In the event the Chief, Population Division, is unable to resolve the challenge to the satisfaction of the challenging State or unit of local government, the challenging State or unit of local government shall be informed in writing of the reasons for the outcome and of its right to proceed formally.

§ 90.10 Form of formal challenge and time limit for filing.

The formal challenge shall be in writing and may be mailed or hand delivered to the Director, Bureau of the Census, Washington, D.C. 20233. The formal challenge shall include a list indicating the material submitted to the Chief, Population Division, during the informal stage, and shall include any additional relevant material it chooses to submit. The formal challenge shall be filed within 30 days of the date the State or unit of local government receives notification by certified mail (return receipt requested) of its right to proceed formally. If, however, a State or unit of local government has a sufficiently meritorious reason for not filing in a timely manner, the Bureau has the discretion to accept the formal challenge.

§ 90.11 Appointment of hearing officer.

Upon receipt of a formal challenge filed in accordance with this part, the Director will appoint a hearing officer to receive written and oral evidence.

§ 90.12 Qualifications of hearing officer.

The hearing officer, a person not involved in the preparation of the estimates being challenged, shall be appointed by the Director from a roster of employees of the Bureau of the Census who have been approved in advance by the Assistant Secretary for Administration, Department of Commerce.

§ 90.13 Offer of hearing.

The hearing officer shall receive the formal challenge and shall notify the State or unit of local government in writing of (a) its right to a hearing prior to the development of a recommended decision for the consideration

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of the Director; and (b) its right to the development of a recommended decision for the consideration of the Director without a hearing. If the State or unit of local government requests that a hearing be conducted, the hearing officer shall establish the date, time, and meeting place for the hearing, in accordance with § 19.14a.

§ 90.14 Hearing.

(a) The hearing shall be conducted by the same hearing officer who collected the documentary evidence, if possible, and shall be held at Bureau of the Census headquarters in Suitland, Md., unless the hearing officer determines that the hearing should be held elsewhere.

(b) The hearing shall be conducted in a manner so as to bring out the pertinent facts relating to the challenge.

(c) The rule of evidence will not be strictly enforced but irrelevant and unduly repetitious testimony shall be excluded.

(d) Cross-examination of all witnesses is permitted and all testimony shall be received under oath or affirmation.

(e) The hearing officer shall have the authority to: (1) Administer oaths or affirmations, (2) rule on the admissibility of evidence, (3) limit the number of witnesses, (4) exclude any person from the hearing room for contumacious conduct or misbehavior that obstructs the hearing, (5) perform other such acts as are necessary or appropriate to the efficient conduct of any proceeding, and (6) make initial findings, analyses, and recommendations.

(f) The hearing shall be recorded but no written record will be prepared unless the Bureau so orders or unless the challenging locality desires one in whole or part and pays the costs of such a written record, or the apportioned costs should the Bureau also desire a written record.

(g) The hearing officer shall prepare findings, analyses, and recommendations and shall transmit them along with all documentary evidence received and the tape or written record (if any) of the hearing to the Director.

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[44 FR 20647, Apr. 6, 1979, as amended at 50 FR 18990, May 6, 1985]

§ 90.15 Decision by Director.

Upon receiving the material specified in § 90.14(g), the Director shall (a) review the findings and recommendations of the hearing officer, and (b) prepare and transmit a letter to the challenging State or unit of local government stating the decision and the reasons therefor. A copy of the hearing officer's findings, analyses, and recommendations shall also be transmitted to the challenging State or unit of local government, and is otherwise publicly available. This decision is final for the Department of Commerce.

§ 90.16 Notification of adjustment.

In the event that the Director finds that the population or per capita income estimate should be adjusted, the Bureau shall promptly inform the appropriate governmental agencies of the revision.

§ 90.17 Timing for hearing and decision.

A maximum period of 120 days, unless additional time is required for sufficiently meritorious reason, shall be provided beyond the closing date for the filing of informal challenges to allow for (a) resolution of informal challenges, (b) appointment of the hearing officer, and (c) the completion of formal hearings. A maximum of 30 additional days shall be allowed for deliberations by the hearing officer and staff. A maximum of an additional 30 days shall also be provided beyond this during which the Census Bureau Director must rule on all cases. Neither the timing nor the general provisions contained in these regulations shall affect the rights of communities

to a review through the data improvement program of the Office of Revenue Sharing under the provisions of Pub. L. 92-512, section 102(b), as amended (31 U.S.C. 1222(b)). Localities challenging only through the Office of Revenue Sharing may not have access to a formal hearing as provided in these regulations.

§ 90.18 Representation.

A challenging unit of government may be represented by its chief executive officer or by counsel, or other duly authorized representative as designated by the chief executive officer in writing to the Bureau.

PARTS 91—99—[Reserved]

PART 100—SEAL

Sec.

100.1 Authority.

100.2 Description.

100.3 Custody.

AUTHORITY: R.S. 161, as amended, sec. 3, 68 Stat. 1012, as amended (5 U.S.C. 301, 13 U.S.C. 3).

SOURCE: 25 FR 2163, Mar. 16, 1960 unless otherwise noted. Redesignated at 50 FR 23947, June 7, 1985.

§ 100.1 Authority.

Pursuant to section 3 of Title 13, United States Code, the Bureau of the Census official seal and design thereof, which accompanies and is made a part of this document, is hereby approved.

§ 100.2 Description.

Seal: On a shield an open book beneath which is a lamp of knowledge emitting rays above in base two crossed quills. Around the whole a wreath of single leaves, surrounded by

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an outer band bearing between two stars the words "U.S. Department of Commerce" in the upper portion and "Bureau of the Census" in the lower portion, the lettering concentric with an inner beaded rim and an outer dentilated rim.

§ 100.3 Custody.

The seal shall remain in the custody of the Director, Bureau of the Census or such officer or employee of the Bureau as he designates and shall be affixed to all certificates and attestations that may be required from the Bureau.



PARTS 101—199—[Reserved]

CHAPTER II—NATIONAL BUREAU OF STANDARDS, DEPARTMENT OF COMMERCE

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SUBCHAPTER A—MEASUREMENT SERVICES

PART 200—POLICIES, SERVICES,
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AUTHORITY: Sec. 9, 31 Stat. 1450, as amended; 15 U.S.C. 277. Interprets or applies sec. 7, 31 Stat. 1450; 15 U.S.C. 275a.

SOURCE: 45 FR 55166, Aug. 19, 1980, unless otherwise noted.

§ 200.100 Statutory functions.

(a) The National Bureau of Standards (NBS) has been assigned the following functions (15 U.S.C. 271 et seq.):

(1) The custody, maintenance, and development of the national standards of measurement, and the provision of means and methods for making measurements consistent with those standards, including the comparison of standards used in scientific investigations, engineering, manufacturing, commerce, and educational institutions with the standards adopted or recognized by the Government.

(2) The determination of physical constants and properties of materials when such data are of great importance to scientific or manufacturing interests and are not to be obtained with sufficient accuracy elsewhere.

(3) The development of methods for testing materials, mechanisms, and structures, and the testing of materials, supplies, and equipment, including items purchased for use of Government departments and independent establishments.

(4) Cooperation with other governmental agencies and with private organizations in the establishment of standard practices, incorporated in codes and specifications.

(5) Advisory service to Government agencies on scientific and technical problems.

(6) Invention and development of devices to serve special needs of the Government.

(b) The calibration and testing activities of NBS stem from the functions in paragraphs (a) (1) and (3) of this section. NBS provides the central basis within the United States for a complete and consistent system of measurement; coordinates that system, and the measurement systems of other nations; and furnishes essential services leading to accurate and uniform physical measurements throughout this Nation's scientific community, industry, and commerce.

(c) The provision of standard reference materials for sale to the public is assigned to the Office of Standard Reference Materials of the National Measurement Laboratory, NBS. That Office evaluates the requirements of science and industry for carefully characterized reference materials, stimulates efforts of NBS to develop methods for production of needed reference materials and directs their production and distribution. For further information on standard reference materials see Subchapter B, Chapter II, Part 230, of this title.

§ 200.101 Measurement research.

(a) The NBS staff continually reviews the advances in science and the trends in technology, examines the measurement potentialities of newly discovered physical phenomena, and uses these to devise and improve standards, measuring devices, and measurement techniques. As new requirements appear, there are continual shifts of program emphasis to meet the most urgent needs for the measurement of additional quantities, extended ranges, or improved accuracies.

(b) The basic research and development activities of NBS are primarily funded by direct appropriations, and are aimed at meeting broad general needs. NBS may also undertake investigations or developments to meet some specialized physical measurement problem of another Government agency, industrial group, or manufacturing firm, using funds supplied by the requesting organization.

§ 200.102 Types of calibration and test services.

(a) NBS has developed instrumentation and techniques for realizing standards for the seven base units of the International System of Units, as agreed upon by the General Conference of Weights and Measures. Reference standards have been established not only for these seven base units, but also for many derived quantities and their multiples and submultiples. Such reference standards, or equivalent working standards, are used to calibrate laboratory and plant standards for other organizations. Accuracy is maintained by stability checks, by comparison with the standards of other national and international laboratories, and by the exploration of alternative techniques as a means of reducing possible systematic error.

(b) Calibrations for many types of instruments and ranges of physical quantities are described in the NBS Special Publication 250 (SP 250). (See § 200.115 for details relating to the description of service items and listing of fees.)

(c) In recent years NBS has offered to the public new measurement services called measurement assurance programs. These programs are designed for laboratories whose measurement process involves the calibration of other standards. A measurement assurance program is a measurement quality control process. By use of carefully designed redundant measurements and measurements made on NBS transport standards a total uncertainty of the laboratories measurement process can be determined by NBS. The results of these tests are then reported to the customer as uncertainties of the customer's measurements relative to national standards.

(d) Special measurements not listed in SP 250 may be made upon request. These might involve unusual physical quantities, upper or lower extremes of range, higher levels of accuracy, fast response speeds, short durations, broader ranges of associated parameters, or special environmental conditions. Such inquiries should describe clearly the measurement desired. Indication of the scientific or economic basis for the requirements to be satisfied will be helpful in determining future NBS programs. Fees for work accepted will be based upon actual costs incurred.

(e) The principal emphasis of NBS is on those calibrations and other tests requiring such accuracy as can be obtained only by direct comparison with its standards.

(f) Other services which may be obtained include:

(1) Tests of measuring instruments to determine compliance with specifications or claims, when the evaluation is critical in national scientific or technical operations, and when suitable facilities are not available elsewhere; and

(2) Referee tests in important cases when clients are unable to agree upon the method of measurement, the results of tests, or the interpretation of these results, but have agreed in advance in writing to accept and abide by the findings of NBS.

(g) NBS reserves the right to decline any request for services if the work would interfere with other activities deemed by the Director to be of greater importance. In general, measurement services are not provided when available from commercial laboratories.

(h) Suggestions will be offered on measurement techniques and on other sources of assistance on calibration or measurement problems when the equipment and personnel of NBS are unable to undertake the work. The National Conference of Standards Laboratories issues a Directory of Standards Laboratories in the United States which perform calibration work (obtainable from NCSL Secretariat, c/o National Bureau of Standards, Boulder, CO 80303). Those laboratories which perform testing are listed in

the ASTM Directory of Testing Laboratories, Commercial and Institutional. (Directory available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.) Similar listings appear in buyer's guides for commercial products and in technical journals concerned with physical measurement.

§ 200.103 Consulting and advisory services.

(a) In areas of its special competence, NBS offers consulting and advisory services on various problems related to measurement, e.g., details of design and construction, operational aspects, unusual or extreme conditions, methods of statistical control of the measurement process, automated acquisition of laboratory data, and data reduction and analysis by computer. Brief consultation may be obtained at no charge; the fee for extended effort will be based upon actual costs incurred. The services outlined in this paragraph do not include services in connection with legal proceedings not involving the United States as a named party, nor to testimony or the production of data, information, or records in such legal proceedings which is governed by the policies and procedures set forth in Subchapter H, Chapter II, Part 275, of this title.

(b) To enhance the competence of standards laboratory personnel, NBS conducts at irregular intervals several group seminars on the precision measurement of specific types of physical quantities, offering the opportunity of laboratory observation and informal discussion. A brochure describing the current series of seminars can be obtained by writing the Office of Measurement Services, National Bureau of Standards, Washington, DC 20234.

§ 200.104 Standard reference materials.

Often the performance of a device or structure can be evaluated at the user's laboratory by comparing its response to unknown materials with its response to a stable, homogeneous reference specimen which has been well-characterized with regard to the physical or chemical property being measured. For information regarding care-

fully characterized materials see Subchapter B, Chapter II, Part 230, of this title. The Office of Standard Reference Materials in the NBS National Measurement Laboratory administers a program to provide many types of well-characterized materials that are needed to calibrate a measurement system or to produce scientific data that can be readily referred to a common base. NBS SP 260 is a catalog of Standard Reference Materials available from NBS.

§ 200.105 Standard reference data.

Data on the physical and chemical properties of the large variety of substances used in science and technology need to be compiled and evaluated for application in research, development, engineering design, and commerce. The Office of Standard Reference Data (OSRD) in the NBS National Measurement Laboratory provides coordination of and access to a number of governmental and nongovernmental data centers throughout this country and the world which are responsive to user needs for data. The OSRD's present program is assembled under a series of tasks which include data for application in energy, environment and health, industrial process design, materials durability, and resource recovery. The subject data are disseminated as hard-copy information in the Journal of Physical and Chemical Reference Data, published jointly with the American Chemical Society and the American Institute of Physics, in the National Standard Reference Data System reports as the NSRDS-NBS series, and as NBS special reports. Magnetic tapes of data on selected topics are also issued through the OSRD and the National Technical Information Service. A newsletter, "Reference Data Report," is issued bi-monthly describing current activities. Information concerning the above is available upon request from the OSRD.

§ 200.106 Publications.

Publications provide the primary means of communicating the results of the NBS programs and services to its varied technical audiences, as well as

to the general public. NBS issues some fifteen categories of publications including three periodicals, ten non-periodicals series, interagency reports, and papers in the journals and books of professional organizations, technological associations, and commercial publications. The calibration services, standard reference materials and related measurement services along with changes and fees are published in two Special Publications (SP's) and their supplements. These are SP 250 "Calibration and Related Measurement Services of the National Bureau of Standards" ¹ and SP 260 "NBS Standard Reference Materials Catalog." ² A complete catalog of all publications by NBS authors is issued annually as a supplement to SP 305 "Publications of the National Bureau of Standards." Announcements and listings of recent NBS publications and services are published in each issue of the bimonthly "NBS Journal of Research" ³ and the NBS monthly magazine, "Dimensions/NBS" ⁴. Complete citations to NBS publications, along with information on availability are published bimonthly in the "NBS Publications Newsletter", available free from the Technical Information and Publications Division, National Bureau of Standards, Washington, DC 20234. NBS publications are also announced (with abstracts) in "Government Reports Announcements and Index" published every two weeks by the National Technical Information Service (NTIS), Springfield, Virginia 22161 ⁵. NTIS also sells microfiche copies of all NBS GPO-published documents, as well as paper copy and

microfiche versions of NBS Interagency Reports.

§ 200.107 WWV-WWVH-WWVB broadcasts.

(a) *Technical services.* The NBS radio stations WWV at Fort Collins, Colorado, and WWVH on the island of Kauai, Hawaii, broadcast a number of technical services continuously night and day. These services are:

(1) Standard radio frequencies, 2.5, 5, 10, 15, and 20, MHz (WWV) and 2.5, 5, 10, and 15 MHz (WWVH); (2) standard time signals; (3) time intervals; (4) UTI corrections; (5) standard audio frequencies; (6) standard musical pitch; (7) a slow time code; (8) Omega Navigation System status reports; (9) geophysical alerts; and (10) marine storm warnings. NBS also broadcasts time and frequency signals from its low frequency station, WWVB, also located at Fort Collins, Colorado.

(b) *Time announcements.* Once per minute voice announcements are made from WWV and WWVH. The two stations are distinguished by a female voice from WWVH and a male voice from WWV. The WWVH announcement occurs first, at 15 seconds before the minute, while the WWV announcement occurs at 7½ seconds before the minute. Coordinated Universal Time (UTC) is used in these announcements.

(c) *Time corrections.* The UTC time scale operates on atomic frequency, but by means of step adjustments is made to approximate the astronomical UTI scale. It may disagree from UTI by as much as 0.9 second before step adjustments of exactly 1 second are made. These adjustments, or leap seconds are required about once per year and will usually be made on December 31 or June 30. For those who need astronomical time more accurately than 0.9 second, a correction to UTC is encoded by the use of double ticks after the start of each minute. The first through the eighth seconds ticks will indicate a "plus" correction, and from the ninth through the 16th a "minus" correction. The correction is determined by counting the number of double ticks. For example, if the first, second, and third ticks are doubled,

¹ Single copies available free from the National Bureau of Standards, Washington, DC 20234.

² For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, for a subscription price. The annual subscription price for the NBS Journal of Research on the date of the publication of these regulations is \$13.00 and for Dimensions/NBS it is \$11.00. Prices, however, for these publications are subject to change without notice.

³ The annual subscription rate at the date of the publication of these regulations for this service is \$275.00, North American Continent, \$375.00 all others.

the correction is "plus" 0.3 second. If the ninth, 10th, 11th, and 12th ticks are doubled, the correction is "minus" 0.4 second.

(d) *Standard time intervals.* An audio pulse (5 cycles of 1000 Hz on WWV and 6 cycles of 1200 Hz on WWVH), resembling the ticking of a clock, occurs each second of the minute except on the 29th and 59th seconds. Each of these 5-millisecond second pulses occur within a 40-millisecond period, wherein all other modulation (voice or tone) is removed from the carrier. These pulses begin 10 milliseconds after the modulation interruption. A long pulse (0.8 second) marks the beginning of each minute.

(e) *Standard frequencies.* All carrier and audio frequencies occur at their nominal values according to the International System of Units (SI). For periods of 45-second duration, either 500-Hz or 600-Hz audio tones are broadcast in alternate minutes during most of each hour. A 440-Hz tone, the musical pitch A above middle C, is broadcast once per hour near the beginning of the hour.

(f) *Accuracy and stability.* The time and frequency broadcasts are controlled by the NBS atomic frequency standards, which realize the internationally defined cesium resonance frequency with an accuracy of 1 part in 10^{13} . The frequencies transmitted by WWV and WWVH are held stable to better than ± 2 parts in 10^{11} at all times. Deviations at WWV are normally less than 1 part in 10^{12} from day to day. Incremental frequency adjustments not exceeding 1 part in 10^{12} are made at WWV and WWVH as necessary. Changes in the propagation medium (causing Doppler effect, diurnal shifts, etc.) result in fluctuations in the carrier frequencies as received which may be very much greater than the uncertainties described above.

(g) *Slow time code.* A modified IRIG H time code occurs continuously on a 100-Hz subcarrier. The format is 1 pulse per second with a 1-minute time frame. It gives day of the year, hours, and minutes in binary coded decimal form.

(h) *Omega announcements.* Omega Navigation System status reports are broadcast in voice from WWV at 16

minutes after the hour and from WWVH at 47 minutes after the hour. The international Omega Navigation System is a very low frequency (VLF) radio navigation aid operating in the 10 to 14 kHz frequency band. Eight stations are in operation around the world. Omega, like other radio navigation systems, is subject to signal degradation caused by ionospheric disturbances at high latitudes. The Omega announcements on WWV and WWVH are given to provide users with immediate notification of such events and other information on the status of the Omega system.

(i) *Geophysical alerts.* These occur in voice at the 18th minute of each hour from WWV. They point out outstanding events which are in process, followed by a summary of selected solar and geophysical events in the past 24 hours and a forecast for the next 24 hours. They are provided by the Space Environment Laboratory, National Oceanic and Atmospheric Administration, Boulder, CO 80303.

(j) *Marine storm information.* Weather information about major storms in the Atlantic and eastern North Pacific are broadcast in voice from WWV at 8, 9, and 10 minutes after each hour. Similar storm warnings covering the eastern and central North Pacific are given from WWVH at 48, 49, and 50 minutes after each hour. An additional segment (at 11 minutes after the hour on WWV and at 51 minutes on WWVH) may be used when there are unusually widespread storm conditions. The brief messages are designed to tell mariners of storm threats in their areas. If there are no warnings in the designated areas, the broadcasts will so indicate. The ocean areas involved are those for which the U.S. has warning responsibility under international agreement. The regular times of issue by the National Weather Service are 0500, 1100, 1700, and 2300 UTC for WWV and 0000, 0600, 1200, and 1800 UTC for WWVH. These broadcasts are updated effective with the next scheduled announcement following the time of issue.

(k) *"Silent" periods.* These are periods with no tone modulation during which the carrier, seconds ticks, minute time announcements, and 100

Hz modified IRIG H time code continue. They occur during the 16th through the 20th minute on WWVH and the 46th through the 51st minute on WWV.

(l) *WWVB*. This station (antenna coordinates 40°40'28.3" N., 105°02'39.5" W.; radiated power 12 kw.) broadcasts on 60 kHz. Its time scale is the same as for WWV and WWVH, and its frequency accuracy and stability are the same. Its entire format consists of a 1 pulse per second special binary time code giving minutes, hours, days, and the correction between its UTC time scale and UT1 astronomical time. Identification of WWVB is made by its unique time code and a 45° carrier phase shift which occurs for the period between 10 minutes and 15 minutes after each hour. The useful coverage area of WWVB is within the continental United States. Propagation fluctuations are much less with WWVB than with high-frequency reception, permitting frequency comparisons to be made to a few parts in 10⁻¹¹ per day.

(m) *Special Publication 432*. This publication describes in detail the standard frequency and time service of NBS. Single copies may be obtained at no charge upon request from the National Bureau of Standards, Time & Frequency Services Group, 524.06, Boulder, CO 80303. Quantities may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, at a nominal charge per copy.

§ 200.108 Request procedure.

(a) A formal purchase order for the calibration or test should be sent before or at the time the instrument or standard is shipped. The purchase order should provide clear identification of the apparatus being submitted, and give separate instructions for return shipment, mailing of report, and billing. If a customer wishes to minimize the time during which the equipment is out of service, the customer can usually arrange to be notified of the scheduled test date to allow timely shipment. (See § 200.110.) Requests from Federal agencies, or from State agencies, for calibrations or tests on material to be used on private or

Federal contract work should be accompanied either by purchase order or by letter or document authorizing the cost of the work to be billed to the agency.

(b) The submission of a purchase order for measurement services under this subchapter shall be understood as constituting an agreement on the part of the customer to be bound by the restrictions on the use of results as set forth in § 200.113 of this part. Acceptance of purchase orders does not imply acceptance of any provisions set forth in the order contrary to the policy, practice, or regulations of NBS or the U.S. Government. (A statement to the effect that NBS is an agency of the U.S. Government should satisfy other Government agencies with regard to compliance with Government regulations and Executive orders.)

(c) A test number will be assigned by NBS to each instrument or group of similar instruments or standards when the order is accepted. This test number should be referred to in all subsequent communications. Also, each instrument in a group must be uniquely identified, usually by the manufacturer's name and instrument serial number. When the serial number is lacking, an alternative identifying mark should be provided. If none is found, NBS will mark the piece with an NBS identification number. If the apparatus submitted has been previously calibrated by NBS, the serial number or identifying mark should be given on the new order, so that a continuing record of stability history can be established.

(d) Inquiries for measurement services should be directed to the NBS address listed in the various sections of the Appendix to SP 250.

§ 200.109 Shipping, insurance, and risk of loss.

(a) Shipment of apparatus to NBS for calibration or other test should be made only after the customer has accepted the estimate of cost and the tentative scheduling. Repairs and adjustments on apparatus submitted should be attended to by the owner, since NBS will not undertake them

except by special arrangement. Apparatus not in good condition will not be calibrated. If defects are found after calibration has begun, the effort may be terminated, a report issued summarizing such information as has been found, and a fee charged in accordance with the amount of work done.

(b) The customer should pack apparatus sent to NBS so as to minimize the likelihood of damage in shipment and handling. Suggestions on packing and shipping are made in some sections of SP 250. In every case, the sender should consider the nature of the apparatus, pack it accordingly, and clearly label shipments containing fragile instruments or materials, such as glass and the like.

(c) To minimize damage during shipment resulting from inadequate packing, the use of strong reusable containers is recommended. As an aid in preventing loss of such containers, the customer's name should be legibly and permanently marked on the outside. In order to prolong the container's use the notation "REUSABLE CONTAINER, DO NOT DESTROY" should be marked on the outside.

(d) Shipping and insurance coverage instructions should be clearly and legibly shown on the purchase order for the calibration or test. The customer must pay shipping charges to and from NBS; shipments from NBS will be made collect. The method of return transportation should be stated, and it is recommended that return shipments be insured, since NBS will not assume liability for their loss or damage. For long-distance shipping it is found that air express and air freight provide an advantage in reduction of time in transit. If return shipment by parcel post is requested or is a suitable mode of transportation, shipments will be prepaid by NBS, but without covering insurance. When no shipping or insurance instructions are furnished, return shipment will be made by common carrier collect, but uninsured.

(e) NBS will not be responsible for the risk of loss or damage to any item during shipment to or from NBS. Any arrangements for insurance covering this risk must be made by the customer. Return shipment will be made by NBS as indicated in paragraph (d) of

this section. The purchase order should always show the value of the equipment, and if transit insurance is carried by the customer, this fact should be stated.

(f) The risk of loss or damage in handling or testing of any item by NBS must be assumed by the customer, except when it is determined by NBS that such loss or damage was occasioned solely by the negligence of NBS personnel.

(g) When a test number has been assigned prior to shipment to NBS, this number should be clearly marked on the shipping container. When a test number has not been assigned, an invoice, copy of the purchase order, or letter should be enclosed in the shipment to insure proper identification. The original purchase order should be forwarded as appropriate to:

Office of Measurement Services, National Bureau of Standards, Washington, DC 20234; or to Measurement Services Clerk, National Bureau of Standards, Boulder, CO 80303.

(h) The calibrations listed in SP 250 are performed at Boulder, Colorado and Gaithersburg, Maryland.

§ 200.110 Priorities and time of completion.

Schedule work assignments for calibrations and other tests will generally be made in the order in which confirmed requests are received. However, Government work may be given priority. On the regular services, the workload is usually such that the turnaround interval, between the date a customer's apparatus is received and the date it is prepared for return shipment, will be not more than 45 days. Some types of instruments may require considerably longer, particularly if their abnormal behavior requires reruns to check reliability. The customer who can spare the instrument for only a short time can usually arrange by letter or telephone call for shipping it to NBS just as the assigned starting date approaches. A notice will be sent acknowledging receipt of the customer's standard and/or purchase order. If both a confirmed purchase order (or equivalent) and the apparatus have been received, estimates of

the completion date and the calibration fee will be sent upon request.

§ 200.111 Witnessing of operations.

NBS welcomes scientists and engineers who may wish to visit its laboratories and discuss its methods. Ordinarily visitors will not be permitted to witness the actual carrying out of highly precise measurements because their presence introduces distraction that may lead to errors or delays. This policy may be waived in those cases where NBS determines that the visitor can be of service in setting up apparatus of a new or unusual nature, in the case of referee tests, or in other cases in which the legal validity of the result may require the presence of duly authorized witnesses.

§ 200.112 Reports.

(a) Results of calibrations and other tests are issued to the customer as formal reports entitled, "National Bureau of Standards Report of Calibration," "National Bureau of Standards Report of Test," or "National Bureau of Standards Report of Analysis," as appropriate. Copies are not supplied to other parties except under applicable Federal law. Whenever formal certification is required by law, or to meet special conditions adjudged by NBS to warrant it, a letter will be provided certifying that the particular item was received and calibrated or tested, and identifying the report containing the results.

(b) NBS reports of calibration generally include in sentence form a statement of the uncertainty attached to the numerical values reported. Limits of uncertainty usually comprise an estimate of systematic error plus a value of imprecision. Details on how these estimates are arrived at are in many cases included in the calibration report. Additional information may be found in SP 250.

(c) The NBS practice is to express data given in calibration or test reports in the SI or International System of Units. The International System of Units (SI) was defined and given official status by the 11th General Conference of Weights and Measures, 1960. A complete listing of SI units is presented in detail in NBS SP

330. The NBS will express data in SI units unless this makes communication excessively complicated. For example, commercial gage designations, commonly used items identified by nominal dimensions, or other commercial nomenclatures or devices (such as drill sizes, or commercial standards for weights and measures) expressed in customary units are an exception from this practice. However, even in such instances, when practical and meaningful, SI and customary units may be given in parallel. Users of NBS calibration services may specify the units to be used in the calibration, especially for commercial devices and standards using customary units or units having some legal definition.

§ 200.113 Use of results or reports.

(a) As the national standards laboratory of the United States, NBS maintains and establishes the primary standards from which measurements in science and industry ultimately derive. It is therefore sometimes desirable for manufacturers or users of measurement standards to make appropriate reference to the relationship of their calibrations to NBS calibrations. The following considerations must be borne in mind, and shall be understood as constituting an agreement on the part of the NBS customer to be bound thereby in making reference to NBS calibration and test reports.

(b) The results of calibrations and tests performed by NBS are intended solely for the use of the organization requesting them, and apply only to a particular device or specimen at the time of its test. The results shall not be used to indicate or imply that they are applicable to other similar items. In addition, such results must not be used to indicate or imply that NBS approves, recommends, or endorses the manufacturer, the supplier, or the user of such devices or specimens, or that NBS in any way "guarantees" the later performance of items after calibration or test.

(c) NBS declares it to be in the national interest that it maintain an impartial position with respect to any commercial product. Advertising the

findings on a single instrument could be misinterpreted as an indication of performance of other instruments of identical or similar type. There will be no objection, however, to a statement that the manufacturer's primary standards have been periodically calibrated by NBS, if this is actually the case, or that the customer might arrange to have NBS calibrate the item purchased from the manufacturer.

(d) NBS does not approve, recommend, or endorse any proprietary product or proprietary material. No reference shall be made to NBS, or to reports or results furnished by NBS in any advertising or sales promotion which would indicate or imply that NBS approves, recommends, or endorses any proprietary product or proprietary material, or which has as its purpose an intent to cause directly or indirectly the advertised product to be used or purchased because of NBS test reports or results.

In its own activities as a scientific institution, NBS uses many different materials, products, types of equipment, and services. This use does not imply that NBS has given them a preferential position or a formal endorsement. Therefore, NBS discourages references, either in advertising or in the scientific literature, which identify it as a user of any proprietary product, material, or service. Occasionally, effective communication of results by NBS to the scientific community requires that a proprietary instrument, product, or material be identified in an NBS publication. Reference in an NBS publication, report, or other document to a proprietary item does not constitute endorsement or approval of that item and such reference should not be used in any way apart from the context of the NBS publication, report, or document without the advance express written consent of NBS.

§ 200.114 Fees and bills.

(a) In accordance with 15 U.S.C. 271 et seq., fees are charged for all measurement services performed by NBS, unless waived by the Director, or the Director's designee, when deemed to be in the interest of the Government. The above-mentioned statutes authorize the issuance from time to time of

appropriate regulations regarding the payment of fees, the limits of tolerance on standards submitted for verification, and related matters.

(b) The minimum fee for any service request accepted by NBS is \$10, unless otherwise indicated in SP 250. If apparatus is returned without testing, a minimum charge of \$10 may be made to cover handling. Charges commensurate with the work performed will be assessed for calibrations which cannot be completed because of faulty operation of the customer's device. Fees for calibrations or tests include the cost of preparation of an NBS report. Remittances should be made payable to the National Bureau of Standards.

§ 200.115 Description of services and list of fees, incorporation by reference.

(a) NBS Special Publication 250, "Calibration and Related Measurement Services of the National Bureau of Standards" is hereby incorporated by reference, pursuant to 5 U.S.C. 552(a)(1) and 1 CFR Part 51. SP 250 states the authority under which NBS performs various types of measurement services including calibrations and tests and charges fees therefor, states the general conditions under which the public may secure such services, describes these services in considerable detail, and lists the fees to be charged, and sets out the instructions for requesting them in an appendix which is reviewed, revised and reissued semi-annually (December and June). The Director, Office of the Federal Register, approved the incorporation by reference on December 28, 1967.

(b) SP 250 is available at the following places:

(1) Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(2) Technical Information and Publications Division, National Bureau of Standards, Washington, DC 20234.

(3) District Offices of the U.S. Department of Commerce.

(4) Federal Depository Libraries.

(c) Revisions of SP 250 will be issued from time to time by the National Bureau of Standards, Washington, DC 20234.

(d) Further information concerning policies, procedures, services, and fees may be obtained by writing the Office

of Measurement Services, National Bureau of Standards, Washington, DC 20234.

SUBCHAPTER B—STANDARD REFERENCE MATERIALS**PART 230—STANDARD REFERENCE MATERIALS****Subpart A—General Information****Sec.**

- 230.1 Introduction.
 230.2 Identification of Standard Reference Materials.
 230.3 New Standard Reference Materials.

Subpart B—Purchase Procedure

- 230.4 Ordering.
 230.5 Terms and shipping.
 230.6 Standard Reference Materials out of stock.

Subpart C—Description of Services and List of Fees

- 230.7 Description of services and list of fees, incorporation by reference.

AUTHORITY: Sec. 9, 31 Stat. 1450, as amended; 15 U.S.C. 277. Interprets and applies sec. 7, 70 Stat. 959; 15 U.S.C. 275a.

SOURCE: 41 FR 8472, Feb. 27, 1976, unless otherwise noted.

Subpart A—General Information**§ 230.1 Introduction.**

This part states the procedure for ordering Standard Reference Materials (SRM's) issued by the National Bureau of Standards. SRM's are used to calibrate measurement systems, evaluate measurement methods, or produce scientific data that can be referred to a common base. NBS Special Publication 260, "Catalog of NBS Standard Reference Materials," lists and describes the SRM's issued by NBS. SP 260 is periodically revised to include new SRM's and eliminate those that have been discontinued. Between editions of SP 260, supplements are issued that list new or renewal SRM's not listed in SP 260. In addition, these supplements list the fees charged for available SRM's.

§ 230.2 Identification of Standard Reference Materials.

The SRM's are listed by category in SP 260 and by sequential number in the supplements. The number uniquely identifies a particular SRM. Renew-

als are indicated by the addition of a letter to the original number. Thus, 11a is the first, 11b the second, and 11c the third renewal of SRM 11, Basic Open-Hearth Steel, 0.2 percent carbon. In this way, a particular number or number and letter always represent a material of fixed or approximately fixed composition.

§ 230.3 New Standard Reference Materials.

When new SRM's or renewals of old ones are issued, announcements are made in SP 260, its supplement, and in scientific and trade journals.

Subpart B—Purchase Procedure**§ 230.4 Ordering.**

Orders should be addressed to the Office of Standard Reference Materials, National Bureau of Standards, Washington, D.C. 20234. Orders should give the amount (number of units), catalog number and name of the standard requested. *For example:* 1 each, SRM 11h, Basic Open-Hearth Steel, 0.2 percent C. These materials are distributed only in the units listed.

§ 230.5 Terms and shipping.

(a) Prices are given in the SP 260 supplement. These prices are subject to revision and orders will be billed for prices in effect at the time of shipment. No discounts are given on purchases of SRM's.

(b) Payment need not accompany a purchase order. Payment is due within 30 days of receipt of an invoice.

(c) SRM's are shipped in the most expeditious manner that complies with transportation and postal laws and regulations.

§ 230.6 Standard Reference Materials out of stock.

Orders for out-of-stock SRM's will be returned with information as to future availability.

**Subpart C—Description of Services
and List of Fees**

**§ 230.7 Description of services and list of
fees, incorporation by reference.**

(a) The text of NBS Special Publication 260, "Catalog of NBS Standard Reference Materials," and its supplement are hereby incorporated by reference pursuant to 5 U.S.C. 552(a)(1) and 1 CFR Part 51.

(b) SP 260 describes the SRM's that are available and states the procedure

for ordering the materials. SP 260 is available at the following places:

Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
Office of Standard Reference Materials, National Bureau of Standards, Washington, D.C. 20234.

(c) Supplements are issued when needed to reflect additions, deletions, and corrections to SP 260, and to list fees charged for the SRM's. Supplements are available from the Office of Standard Reference Materials, National Bureau of Standards, Washington, D.C. 20234.

SUBCHAPTER C—TRANSCRIPT SERVICES—[RESERVED]**SUBCHAPTER D—STANDARDS FOR BARRELS****PART 240—BARRELS AND OTHER CONTAINERS FOR LIME****Sec.**

- 240.1 Title of act.
- 240.2 Application.
- 240.3 Permissible sizes.
- 240.4 Definitions.
- 240.5 Required marking.
- 240.6 Tolerances.

AUTHORITY: Sec. 4, 39 Stat. 531; 15 U.S.C. 240, unless otherwise noted.

SOURCE: 13 FR 8372, Dec. 28, 1948, unless otherwise noted.

§ 240.1 Title of act.

The act, "Pub. L. 228, 64th Congress," approved August 23, 1916 (39 Stat. 530; 15 U.S.C. 237-242), entitled "An Act to standardize lime barrels," shall be known and referred to as the "Standard Lime-Barrel Act."

§ 240.2 Application.

The rules and regulations in this part are to be understood and construed to apply to lime in barrels, or other containers packed, sold, or offered for sale for shipment from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia; and to lime in containers of less capacity than the standard small barrel sold in interstate or foreign commerce; and to lime imported in barrels from a foreign country and sold or offered for sale; also to lime not in barrels or containers of less capacity than the standard small barrel, sold, charged for, or purported to be delivered as a large or small barrel or a fractional part of said small barrel of lime, from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia.

§ 240.3 Permissible sizes.

Lime in barrels shall be packed only in barrels containing 280 pounds or 180 pounds, net weight. For the purposes of this section the word "barrel" is defined as a cylindrical or approxi-

mately cylindrical vessel, cask or drum.

(Sec. 2, 39 Stat. 530; 15 U.S.C. 238)

§ 240.4 Definitions.

(a) The term "container of less capacity than the standard small barrel," as mentioned in section 3 of the law and as used in the rules and regulations in this part, is defined as any container not in barrel form containing therein a net weight of lime of less than 180 pounds.

(b) The term "label" as used in the rules and regulations in this part is defined as any printed, pictorial, or other matter upon the surface of a barrel or other container of lime subject to the provisions of this act, or upon cloth or paper or the like which is permanently affixed to it by pasting or in a similar manner.

(c) The term "tag" is defined as a tough and strong strip of cloth or paper or the like, bearing any printed, pictorial, or other matter, which is loose at one end and which is secured to a container of lime subject to the provisions of the act.

(Sec. 3, 39 Stat. 530; 15 U.S.C. 239)

§ 240.5 Required marking.

(a) The lettering required upon barrels of lime by section 2 of the law shall be as follows: The statement of net weight shall be in boldface capital letters and figures at least 1 inch in height and not expanded or condensed; it shall be clear, legible, and permanent, and so placed with reference to the other lettering that it is conspicuous. The name of the manufacturer of the lime and where manufactured, and, if imported, the name of the country from which it is imported, shall be in boldface letters at least one-half inch in height and not expanded or condensed, and shall be clear, legible, conspicuous, and permanent. None of these letters and figures shall be superimposed upon each other, nor shall any other characters

be superimposed upon the required lettering or otherwise obscure it. All the above statements shall form parts of the principal label.

(b) The information required upon containers of lime of less capacity than the standard small barrel by section 3 of the law shall be included in a label: *Provided, however*, That in order to allow the utilization of second-hand or returnable bags made of cloth, burlap, or the like, such information may be upon a tag firmly attached to the container in a prominent and conspicuous position. In case a tag is used to give the required information there must not be any label or another tag upon the container which bears any statement having reference to lime, or any statement of weight whatever, which is not identical with the information upon the tag mentioned above; if a container is to be utilized which bears any such inaccurate information upon a label, such container shall be turned inside out or such information shall be obliterated in so far as it is inaccurate by blotting out the letters or figures; or if such inaccurate information is upon a tag, by removing such tag.

(c) If the required lettering is upon a label, the statement of net weight shall be in bold-face capital letters and figures at least three-fourths inch in height and not expanded or condensed; it shall be clear, legible, and permanent, and so placed with reference to the other lettering that it is conspicuous. The word "net" shall form part of the statement of weight. The name of the manufacturer of the lime and the name of the brand, if any, under which it is sold, and, if imported, the name of the country from which it is imported, shall be in bold face letters at least one-half inch in height and not expanded or condensed, and shall be clear, legible, conspicuous, and permanent. None of these letters and figures shall be superimposed upon each other, nor shall any other characters be superimposed upon the required lettering or otherwise obscure it. All the above statements shall form parts of the principal label.

(d) If the required lettering is upon a tag, the statement of net weight

shall be in bold-face capital letters and figures not less than one-half the height of the largest letters or figures used upon such tag: *Provided, however*, That in every case they shall be not less than one-eighth inch in height (12-point capitals), and not expanded or condensed. The word "net" shall form part of the statement of weight. The statement shall be clear, legible, and permanent, and so placed with reference to the other lettering that it is conspicuous. The name of the manufacturer of the lime, and the name of the brand, if any, under which it sold, and, if imported, the name of the country from which it is imported, shall be in bold-face letters and figures not less than one-eighth inch in height (12-point capitals), and not expanded or condensed, and shall be clear, legible, conspicuous, and permanent. None of these letters and figures shall be superimposed upon each other nor shall any other characters be superimposed upon the required lettering or otherwise obscure it. All the above statements shall be included upon the same side of the tag.

(e) In case the lime is actually packed in barrels or in containers of less capacity than the standard small barrel by some person other than the manufacturer of the lime, the information mentioned above must be given in the manner there described, and in addition there must be a statement to this effect: "Packed by _____" (giving the name and address of the packer). This statement shall be in letters not smaller than is specified for the general statement required in the case of barrels and containers of less capacity than the standard small barrel, respectively (see paragraphs (a) and (b) of this section); it shall not be obscured and shall form part of the principal label or be upon the same side of the tag as in those cases provided.

(f) In the case of all lime sold in barrels, the actual place of manufacture of the lime shall be stated on the barrel. In general, this will be the name of the post office nearest or most accessible to the plant. However, when the actual place of manufacture of the lime and the offices of the company are separated but are within the

boundaries of the same county of a State, or when, though not within the boundaries of the same county they are so close together that the post-office address of the offices represents substantially and to all intents and purposes the actual place of manufacture of the lime, then the post-office address of the offices of the company will be sufficient: *Provided, however,* That the address given shall always correctly show the State in which the lime is actually manufactured.

(g) More than one place of manufacture of a manufacturer shall not be shown on the same barrel unless the one at which the particular lime in question is manufactured is pointed out.

(h) If the location of the home offices is stated and this is not the place of manufacture within the meaning of the above definition, an additional statement must be included to this effect: "Manufactured at _____" (giving the location of the plant).

(Secs. 2, 3, 39 Stat. 530; 15 U.S.C. 238, 239)

§ 240.6 Tolerances.

(a) When lime is packed in barrels the tolerance to be allowed on the large barrel or the small barrel of lime shall be 5 pounds in excess or in deficiency on any individual barrel: *Provided, however,* That the average error on 10 barrels of the same nominal weight and packed by the same manufacturer shall in no case be greater than 2 pounds in excess or in deficiency. In case all the barrels available are not weighed, those which are weighed shall be selected at random.

(b) When lime is packed in containers of less capacity than the standard small barrel, the tolerance to be allowed in excess or in deficiency on individual containers of various weights, shall be the values given in the column headed "Tolerance on individual package," of the following table: *Provided, however,* That the average error on 10 containers of the same nominal weight and packed by the same manufacturer shall in no case be greater than the values given in the column headed "Tolerance on average weight," of the following table. In case all the containers available are not

weighed, those which are weighed shall be selected at random.

Weight of packaged	Tolerance on individual package (pounds)	Tolerance on average weight (pounds)
Not greater than 50 lbs.	1½	¾
More than 50 lb. and not greater than 100 lbs.	2	¾
More than 100 lb. and not greater than 150 lb.	3	1½
More than 150 lb. and less than 180 lb.	4	1½

(c) When lime in bulk is sold, charged for, or purported to be delivered as a definite number of large or small barrels, the tolerance to be allowed in excess or in deficiency on such amounts of lime shall be 15 pounds per 1,800 pounds (10 small barrels), or 25 pounds per 2,800 pounds (10 large barrels).

PART 241—BARRELS FOR FRUITS, VEGETABLES AND OTHER DRY COMMODITIES, AND FOR CRANBERRIES

Sec.

- 241.1 Capacities.
- 241.2 Legal standard barrels.
- 241.3 Application of tolerance for "distance between heads."
- 241.4 Application of tolerance for "diameter of head."
- 241.5 Standard dimensions.
- 241.6 Classes of barrels for tolerance application.
- 241.7 Tolerances to be allowed.

AUTHORITY: Sec. 3, 38 Stat. 1187; 15 U.S.C. 236, unless otherwise noted.

SOURCE: 13 FR 8373, Dec. 28, 1948, unless otherwise noted.

NOTE: The rules and regulations in this part refer entirely to individual barrels, and no separate tolerance has been placed on the average content of a number of barrels taken at random from a shipment. It is not believed that barrels can be so made as to take advantage of the tolerances, and, of course, no attempt should be made to do this. It is, therefore, expected that as many barrels will be above as below the standard capacity.

§ 241.1 Capacities.

(a) The capacities of the standard barrel for fruits, vegetables, and other

§ 241.2

dry commodities, other than cranberries, and its subdivisions, are as follows:

Size	Cubic inches	Bushels ¹	Quarts ¹
Barrel	7,056	3.281	105
$\frac{3}{4}$ barrel	5,292	2.46	78 $\frac{3}{4}$
$\frac{1}{2}$ barrel	3,528	1.641	52 $\frac{1}{2}$
$\frac{1}{4}$ barrel	2,352	1.094	35

¹ Struck measure.

(b) The capacities of the standard cranberry barrel and its subdivisions are as follows:

Size	Cubic inches	Bushels ¹	Quarts ¹
Cranberry barrel	5,826	2.709	86 $\frac{1}{4}$
$\frac{3}{4}$ cranberry barrel	4,369.5	2.032	65 $\frac{1}{4}$
$\frac{1}{2}$ cranberry barrel	2,913	1.355	43 $\frac{1}{2}$
$\frac{1}{4}$ cranberry barrel	1,942	.903	28 $\frac{3}{4}$

¹ Struck measure.

(Sec. 1, 38 Stat. 1186; 15 U.S.C. 234)

§ 241.2 Legal standard barrels.

(a) Any barrel having the dimensions specified for a standard barrel for fruits, vegetables, and other dry commodities, other than cranberries, in section 1 of the standard-barrel law, or any barrel or a subdivision thereof having the contents specified in section 1 of the standard-barrel law and in § 241.1(a) regardless of its form or dimensions, is a legal standard barrel for fruits, vegetables, or other dry commodities other than cranberries, or a legal subdivision thereof. No other barrel or subdivision in barrel form is a legal container for fruits, vegetables, or other dry commodities other than cranberries.

(b) Any barrel having the dimensions specified for a standard barrel for cranberries in section 1 of the standard-barrel law, or any subdivision thereof having the contents specified in § 241.1(b), regardless of its form or dimensions, is a legal standard barrel for cranberries or a legal subdivision thereof. No other barrel or subdivision in barrel form is a legal container for cranberries.

(Sec. 1, 38 Stat. 1186; 15 U.S.C. 234)

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§ 241.3 Application of tolerance for "distance between heads."

The tolerance established in this part for the dimension specified as "distance between heads" shall be applied as follows on the various types of barrels in use:

(a) When a barrel or subdivision thereof has two heads, the tolerance shall be applied to the distance between the inside surfaces of the heads and perpendicular to them.

(b) When a barrel or subdivision thereof has but one head and a croze ring or other means for the insertion of a head, such as an inside hoop, etc., at the opposite end, the tolerance shall be applied to the distance from the inside surface of the bottom head and perpendicular to it to the inside edge of the croze ring, or to a point where the inside surface of a head would come were such head inserted in the barrel.

(c) When a barrel or subdivision thereof has but one head and no croze ring or other means for the insertion of a head, such as an inside hoop, etc., at the opposite end, the tolerance shall be applied to the distance from the inside surface of the bottom head and perpendicular to it to a point $\frac{1}{4}$ inches from the opposite end of the staves in the case of a barrel or a $\frac{3}{4}$ barrel, and to a point $\frac{1}{2}$ inch from the opposite end of the staves in the case of the $\frac{1}{2}$ barrel and $\frac{1}{4}$ barrel, respectively. When a barrel or subdivision thereof has been manufactured with but one head and no croze ring or other means for the insertion of a head at the opposite end, and it is desired to insert a second head, the croze ring shall be so cut that the inside edge shall not be more than $\frac{1}{4}$ inches from the end of the staves in the case of a barrel or $\frac{3}{4}$ barrel or not more than $\frac{1}{2}$ inch or $\frac{3}{4}$ inch from the end of the staves in the case of the $\frac{1}{2}$ barrel and $\frac{1}{4}$ barrel, respectively, or the other means shall be so adjusted that the inside surface of the head when inserted shall not exceed these distances from the end of the staves.

§ 241.4 Application of tolerance for "diameter of head."

(a) The tolerance established in this part for the dimension specified as "diameter of head" shall be applied to the diameter of the head over all, including the part which fits into the croze ring of the completed barrel.

(b) The tolerance established in this part for the dimension specified as "effective diameter of head" shall be applied as follows on the various types of barrels and subdivisions in use;

(1) When a barrel or subdivision thereof has two heads, the tolerance shall be applied to the mean of the average diameters from inside to inside of staves at the inner edges of the heads.

(2) When a barrel or subdivision thereof has but one head and a croze ring or other means for the insertion of a head at the opposite end, the tolerance shall be applied to the mean of the average diameters, one taken from inside to inside of staves at the inner edge of the head, the other from inside to inside of staves at the inner edge of the croze ring, or from inside to inside of staves at a point where the inside surface of a head would come were such head inserted in the barrel.

(3) When a barrel or subdivision thereof has but one head and no croze ring or other means for the insertion of a head at the opposite end, the tolerance shall be applied to the mean of the average diameters, one taken from inside to inside of staves at the inner edge of the head, the other taken from inside to inside of staves at a point 1½ inches from the end of the staves in the case of a barrel or ¾ barrel, or at a point 1 inch or ¾ inch from the end of the staves in the case of a ½ barrel or ¼ barrel, respectively.

(c) The standard allowance for depth of croze ring shall be ⅜ inch. Therefore, the standard "effective diameter of head" in the case of the standard barrel is 16¼ inches and in the case of the standard cranberry barrel is 15½ inches.

§ 241.5 Standard dimensions.

Whenever in the rules and regulations in this part the error on a dimension is mentioned, this error shall be determined by taking the difference

between the actual measured dimension and the standard dimension. The error is an error in excess and is to be preceded by a plus sign when the measured dimension is greater than the standard dimension. The error is an error in deficiency and is to be preceded by a minus sign when the measured dimension is less than the standard dimension.

(a) The standard dimensions of a barrel for fruits, vegetables, and other dry commodities other than cranberries, and of a barrel for cranberries, with which the actual measured dimensions are to be compared, are as follows:

Dimensions	Barrel for fruits, vegetables, and other dry commodities other than cranberries (inches)	Barrel for cranberries (inches)
Diameter of head.....	17¼	16¼
Effective diameter of head (see § 241.4).....	16¼	15½
Distance between heads.....	26	25¼
Circumference of bulge, outside measurement.....	64	58½
Length of stave.....	28½	28½

(b) In the case of all subdivisions of the barrel for fruits, vegetables, and other dry commodities other than cranberries, and all subdivisions of the barrel for cranberries, the following dimensions are hereby standardized for the purpose of the application of tolerances, and the actual measured dimensions are to be compared with these:

SUBDIVISIONS OF BARREL FOR FRUITS, VEGETABLES, AND OTHER DRY COMMODITIES OTHER THAN CRANBERRIES

Dimensions	¾ barrel (inches)	½ barrel (inches)	¼ barrel (inches)
Effective diameter of head (see § 241.4).....	15¼	13¾	11½
Distance between heads.....	23½	20¼	18
Circumference of bulge, outside measurement.....	58½	51½	45¼

SUBDIVISIONS OF BARREL FOR CRANBERRIES

Effective diameter of head (see § 241.4).....	14¾	12¾	11
Distance between heads.....	23	20	17¾

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SUBDIVISIONS OF BARREL FOR FRUITS, VEGETABLES, AND OTHER DRY COMMODITIES OTHER THAN CRANBERRIES

Dimensions	$\frac{1}{8}$ barrel (inches)	$\frac{1}{4}$ barrel (inches)	$\frac{1}{2}$ barrel (inches)
Circumference of bulge, outside measurement...	53%	47	41%

(Sec. 1, 38 Stat. 1186; 15 U.S.C. 234)

§ 241.6 Classes of barrels for tolerance application.

For the purpose of the application of tolerances, barrels for fruits, vegetables, and other dry commodities other than cranberries, are hereby divided into two classes as follows:

(a) Class 1 shall include (1) all barrels no dimension of which is in error by more than the following amounts, and (2) all barrels one or more of the dimensions of which are in error by more than the following amounts, and which in addition have no dimension in error in the opposite direction:

	Error, inches
Effective diameter of head.....	$\frac{1}{4}$
Distance between heads.....	$\frac{1}{4}$
Circumference of bulge, outside measurement.....	$1\frac{1}{2}$

(b) Class 2 shall include all barrels at least one dimension of which is in error by more than the amounts given above, but which in addition have at least one dimension in error in the opposite direction. (This class includes all barrels mentioned in section 1 of the law in the proviso reading: "Provided, That any barrel of a different form having a capacity of seven thousand and fifty-six cubic inches shall be a standard barrel.")

(Sec. 1, 38 Stat. 1186; 15 U.S.C. 234)

§ 241.7 Tolerances to be allowed.

(a) The tolerances to be allowed in excess or in deficiency on the dimensions of all barrels of Class 1 shall be as follows:

	Tolerance inches
Diameter of head.....	$\frac{1}{4}$
Effective diameter of head.....	$\frac{1}{4}$

	Tolerance inches
Distance between heads.....	$\frac{1}{4}$
Circumference of bulge, outside measurement.....	$1\frac{1}{2}$
Length of stave.....	$\frac{1}{2}$

(1) If no dimension of a barrel of Class 1 is in error by more than the tolerance given above, then the barrel is within the tolerance allowed.

(2) If one or more of the dimensions of a barrel of Class 1 is in error by more than the tolerance given above, then the barrel is not within the tolerance allowed.

(b) The tolerance to be allowed in excess or in deficiency on all barrels of Class 2 shall be $1\frac{1}{2}$ inches (1.5) inches, and this tolerance is to be applied to the result obtained by the application of the following rule:

(1) Having determined the errors of each dimension and given to each its proper sign (see § 241.4), add the errors on the effective diameter of head and the distance between heads algebraically and multiply the result by 1.67 (or $\frac{5}{3}$). Then add this result to the error on the circumference of bulge algebraically. If the result obtained is not greater than the tolerance given above, then the barrel is within the tolerance allowed; if the result is greater than this tolerance, then the barrel is not within the tolerance allowed.

NOTE: To find the algebraic sum of a number of quantities having different signs, first add all those having one sign; then add all those having the opposite sign; then subtract the smaller sum from the larger, giving this result the sign of the larger quantity.

(c) The tolerance to be allowed in excess or in deficiency on the dimensions of all barrels for cranberries shall be as follows:

	Tolerance, inches
Diameter of head.....	$\frac{1}{4}$
Effective diameter of head.....	$\frac{1}{4}$
Distance between heads.....	$\frac{1}{4}$
Circumference of bulge, outside measurement.....	$1\frac{1}{2}$
Length of stave.....	$\frac{1}{2}$

(1) If no dimension of a barrel for cranberries is in error by more than the tolerance given above, then the barrel is within the tolerance allowed.

(2) If one or more of the dimensions of a barrel for cranberries is in error by more than the tolerance given above, then the barrel is not within the tolerance allowed.

(d) The tolerances to be allowed in excess or in deficiency on all subdivisions of the standard barrel for fruits, vegetables, and other dry commodities other than cranberries, and on all subdivisions of the standard barrel for cranberries, shall be the values given in the following table, and these tolerances are to be applied to the result obtained by the application of the following rule:

(1) Having determined the errors on each dimension and given to each its proper sign (see § 241.5), add the errors on the effective diameter of

head and the distance between heads algebraically and multiply the result by 1.67 (or $\frac{5}{3}$). Then add this result to the error on the circumference of bulge algebraically. If the result obtained is not greater than the tolerance given in the following table for the proper subdivision, then the barrel is within the tolerance allowed; if the result is greater than this tolerance, then the barrel is not within the tolerance allowed.

Size of subdivision	Tolerance	
	For fruits, vegetables, and other dry commodities (inches)	For cranberries (inches)
$\frac{1}{4}$ barrel.....	1 $\frac{1}{4}$ (1.375)	1 $\frac{1}{4}$ (1.25)
$\frac{1}{2}$ barrel.....	1 $\frac{1}{4}$ (1.25)	1 $\frac{1}{4}$ (1.125)
$\frac{3}{4}$ barrel.....	1 $\frac{1}{4}$ (1.125)	1 (1.00)

SUBCHAPTER E—FELLOWSHIPS AND RESEARCH ASSOCIATES

PART 255—FELLOWSHIPS IN LABORATORY STANDARDIZATION AND TESTING FOR QUALIFIED CITIZENS OF OTHER AMERICAN REPUBLICS

Sec.

255.1 Type of fellowships.

255.2 Qualifications.

255.3 Award of fellowships.

255.4 Allowances and expenses.

255.5 Progress reports.

255.6 Duration of fellowships.

255.7 Official notification.

AUTHORITY: R.S. 161; sec. 1, 53 Stat. 1290; 22 U.S.C. 501.

SOURCE: 13 FR 8374, Dec. 28, 1948, unless otherwise noted.

§ 255.1 Type of fellowships.

Fellowships shall be of the combined intern-training and training-in-research type, and may include any or all of the following courses:

(a) Orientation courses consisting of lectures and conferences at the National Bureau of Standards pertaining to laboratory standardization and testing.

(b) Practical laboratory training in various branches of physics, chemistry, and engineering research, under the direction of the National Bureau of Standards, which will include the usual subdivisions of physics (weights and measures, heat, optics, mechanics, atomic physics, electrical measurements and radio) and also technologic applications in research and testing on metals, rubber, leather, paper, textiles, plastics, and clay and silicate products.

(c) Observation and study in such other laboratories within the continental United States as may be selected by the Director of the National Bureau of Standards.

(d) Courses of instruction or research assignments supplementing the practical laboratory training, in universities or colleges selected by the Director of the National Bureau of Standards.

§ 255.2 Qualifications.

Each applicant selected for a fellowship shall be:

(a) A citizen of an American republic other than the United States;

(b) In possession of a certificate of medical examination issued by a licensed physician within 60 days of the date of application, describing the applicant's physical condition and stating that he is free from any communicable disease, physical deformity or disability that would interfere with the proper pursuit of training, research, or any other activity or work incident to the fellowship;

(c) Able to speak, read, write and understand the English language;

(d) Of good moral character and possessing intellectual ability and suitable personal qualities; and

(e) In possession of acceptable evidence that he has successfully completed the equivalent of a four-year university course in a recognized university, college or other institution of learning, with some training or experience in the field of activity which he desires to pursue. Equivalent experience may be substituted for the university training in the case of candidates who are otherwise specially well qualified.

§ 255.3 Award of fellowships.

Fellowships shall be awarded by the Director of the National Bureau of Standards, with the approval of the Secretary of Commerce and the Secretary of State, or the duly authorized representative of the Secretary of State. Applications shall be transmitted to the Secretary of State by the government of the American republic of which the applicant is a citizen through the American diplomatic mission accredited to that government.

§ 255.4 Allowances and expenses.

Allowances and expenses shall be as provided in State Department regulations given in 22 CFR Part 61, and as provided in Department of Commerce Administrative Order No. 202-3.¹

¹Not filed with the Office of the Federal Register.

§ 255.5 Progress reports.

Applicants awarded fellowships under the regulations in this part shall submit written reports of progress in training and research at such intervals as the Director of the National Bureau of Standards may determine.

§ 255.6 Duration of fellowships.

Fellowships may be awarded for periods of varying length, not exceeding one 12-month period of actual training and research and may be extended for not exceeding the same periods in the manner prescribed under § 255.3 and subject to the availability of appropriations. Fellowships may be cancelled for cause by the Director of the National Bureau of Standards, with the approval of the Secretary of Commerce and the Secretary of State, or the duly authorized representative of the Secretary of State.

§ 255.7 Official notification.

Each applicant selected by the Director of the National Bureau of Standards and approved by the Secretary of Commerce and the Secretary of State, or the duly authorized representative of the Secretary of State, shall be notified of his award through diplomatic channels. The notification shall state the duration and type of fellowship, outline the program of training and research, and state the allowances authorized: *Provided, however*, That the Director of the National Bureau of Standards may subsequently amend the program and duration of the fellowship if in his opinion such action would be in the interest of obtaining training and research better suited to the needs and capabilities of the fellow than those prescribed in the notification. The amount originally authorized for monthly allowances and other expenses may also be amended, if necessary, with the approval of the Secretary of Commerce and the Secretary of State, or the duly authorized representative of the Secretary of State.

PART 256—RESEARCH ASSOCIATE PROGRAM

Sec.

- 256.1 Introduction.
- 256.2 The Research Associate Program.
- 256.3 Procedure.
- 256.4 Qualifications.
- 256.5 Duration of projects.
- 256.6 Information concerning the Research Associate Program.

AUTHORITY: 27 Stat. 395, 31 Stat. 1039; 20 U.S.C. 91.

SOURCE: 32 FR 10252, July 12, 1967, unless otherwise noted.

§ 256.1 Introduction.

This part states policies and procedures concerning the Research Associate Program at the National Bureau of Standards. In the exercise of its functions as a major scientific agency of the Federal Government, the National Bureau of Standards may make its facilities available to persons other than Bureau employees to work with NBS scientists and engineers in collaborative research aimed at furthering the Nation's scientific, industrial, and economic growth. Such cooperative programs may be sponsored by professional, technical, or industrial organizations or associations. Such participants, when so sponsored, are designated "Research Associates".

§ 256.2 The Research Associate Program.

The Bureau provides its facilities, scientific competence, and technical supervision for defined scientific or technical research by a Research Associate when such research is complementary to and compatible with scientific or technical research being performed or to be undertaken by NBS under its statutory mission and authority. The Sponsors pay the salaries of their Research Associates and Sponsor-furnished technical assistants and secretaries of the Research Associates, if any, their travel costs, and other related expenses. Additionally, Sponsors reimburse NBS for the cost of research equipment, services, or materials obtained for the Research Associate.

[32 FR 10252, July 12, 1967, as amended at 40 FR 50707, Oct. 31, 1975]

§ 256.3

§ 256.3 Procedure.

Arrangements for collaborative research by NBS with a Research Associate generally begin through discussions or correspondence between NBS scientists and representatives of potential sponsoring companies, trade associations or professional organizations. These preliminary steps are followed by the consummation of a Memorandum of Agreement which is signed by NBS, the sponsoring organization and the Research Associate. The agreement sets out the respective responsibilities and obligations of all parties.

§ 256.4 Qualifications.

Each candidate selected to serve as a Research Associate must be determined to be scientifically qualified by the Sponsor and by the NBS, and found by NBS to be of good moral

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character and to possess suitable personal qualities.

§ 256.5 Duration of projects.

The work of a Research Associate is generally conducted on a full-time basis. Typically, Research Associates are in residence at NBS for 6 to 18 months; longer-term programs may be carried on by a succession of Research Associates. Agreements provide for cancellation by any of the parties.

§ 256.6 Information concerning the Research Associate Program.

Information concerning the Research Associate Program may be obtained from the Industrial Liaison Officer, National Bureau of Standards, Washington, D.C. 20234.

[40 FR 50707, Oct. 31, 1975]

SUBCHAPTER F—REGULATIONS GOVERNING TRAFFIC AND CONDUCT

PART 265—REGULATIONS GOVERNING TRAFFIC AND CONDUCT ON THE GROUNDS OF THE NATIONAL BUREAU OF STANDARDS, GAITHERSBURG, MARYLAND, AND BOULDER AND FORT COLLINS, COLORADO

SOURCE: 39 FR 41170, Nov. 25, 1974, unless otherwise noted.

Subpart A—General

Sec.

- 265.1 Definitions.
- 265.2 Applicability.
- 265.3 Compliance with directions.
- 265.4 Making or giving of false reports.
- 265.5 Laws of Maryland and Colorado applicable.

Subpart B—Traffic and Vehicular Regulations

- 265.11 Inspection of license and registration.
- 265.12 Speeding or reckless driving.
- 265.13 Emergency vehicles.
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- 265.15 Right-of-way in crosswalks.
- 265.16 Parking.
- 265.17 Parking permits.
- 265.18 Prohibited servicing of vehicles.
- 265.19 Unattended vehicles.
- 265.20 Towing of improperly parked vehicles.
- 265.21 Improper use of roads as thoroughfares.
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Subpart C—Buildings and Grounds

- 265.31 Closing the site.
- 265.32 Trespassing.
- 265.33 Preservation of property.
- 265.34 Conformity with posted signs.
- 265.35 Nuisances.
- 265.36 Intoxicating beverages.
- 265.37 Narcotics and other drugs.
- 265.38 Intoxication or other impairment of function.
- 265.39 Weapons and explosives.
- 265.40 Nondiscrimination.
- 265.41 Gambling.
- 265.42 Photography for advertising or commercial purposes; advertising and soliciting.
- 265.43 Pets and other animals.

Subpart D—Penalties

- 265.51 Penalties—other laws.

AUTHORITY: Sec. 9, 31 Stat. 1450, as amended, (15 U.S.C. 277). Applies sec. 1, 72 Stat. 1711, as amended, (15 U.S.C. 278e(b)).

Subpart A—General

§ 265.1 Definitions.

As used in this part:

(a) "Site" means those grounds and facilities of the National Bureau of Standards, Department of Commerce located in Montgomery County, Maryland, and in Boulder and Larimer Counties, Colorado, over which the Federal Government has acquired concurrent jurisdiction in accordance with appropriate authority.

(b) "Uniformed guard" means a designated employee appointed by the Director for purposes of carrying out the authority of a U.S. Special Policeman, as provided by 40 U.S.C. 318.

(c) "Director" means the Director of the National Bureau of Standards.

[39 FR 41170, Nov. 25, 1974, as amended at 41 FR 51787, Nov. 24, 1976]

§ 265.2 Applicability.

The regulations in this part establish rules with respect to the parking and operation of motor vehicles and other activities and conduct on the site. These regulations are intended to supplement the rules and regulations regarding conduct in Part O of Subtitle A of this title and in other officially issued orders and regulations of the Department of Commerce and the National Bureau of Standards.

§ 265.3 Compliance with directions.

No person shall fail or refuse to comply with any lawful order or direction of a uniformed guard in connection with the control or regulation of traffic and parking or other conduct on the site.

§ 265.4 Making or giving of false reports.

No person shall knowingly give any false or fictitious report or information to any authorized person investigating an accident or apparent violation of law or these regulations. Noth-

ing in this section shall affect the applicability of 18 U.S.C. 1001 regarding false, fictitious or fraudulent statements or entries.

§ 265.5 Laws of Maryland and Colorado applicable.

Unless otherwise specifically provided herein, the laws of the State of Maryland and of the State of Colorado shall be applicable to the site located within those respective States. The applicability of State laws shall not, however, affect or abrogate any other Federal law or regulation applicable under the circumstances.

Subpart B—Traffic and Vehicular Regulations

§ 265.11 Inspection of license and registration.

No person may operate any motor vehicle on the site unless he holds a current operator's license, nor may he, if operating a motor vehicle on the site, refuse to exhibit for inspection, upon request of a uniformed guard, his operator's license or proof of registration of the vehicle under his control at time of operation.

§ 265.12 Speeding or reckless driving.

(a) No person shall drive a motor vehicle on the site at a speed greater than or in a manner other than is reasonable and prudent for the particular location, given the conditions of traffic, weather, and road surface and having regard to the actual and potential hazards existing.

(b) Except when a special hazard exists that requires lower speed for compliance with paragraph (a) of this section, the speed limit on the site is 25 m.p.h., unless another speed limit has been duly posted, and no person shall drive a motor vehicle on the site in excess of the speed limit.

§ 265.13 Emergency vehicles.

No person shall fail or refuse to yield the right-of-way to an emergency vehicle when operating with siren or flashing lights.

§ 265.14 Signs.

Every driver shall comply with all posted traffic and parking signs.

§ 265.15 Right-of-way in crosswalks.

No person shall fail or refuse to yield the right-of-way to a pedestrian or bicyclist crossing a street in a marked crosswalk.

§ 265.16 Parking.

No person, unless otherwise authorized by a posted traffic sign or directed by a uniformed guard, shall stand or park a motor vehicle:

- (a) On a sidewalk;
- (b) Within an intersection or within a crosswalk;
- (c) Within 15 feet of a fire hydrant, 5 feet of a driveway or 30 feet of a stop sign or traffic control device;
- (d) At any place which would result in the vehicle being double parked;
- (e) At curbs painted yellow;
- (f) In a direction facing on-coming traffic;
- (g) In a manner which would obstruct traffic;
- (h) In a parking space marked as not intended for his use;
- (i) Where directed not to do so by a uniformed guard;
- (j) Except in an area specifically designated for parking or standing;
- (k) Except within a single space marked for such purposes, when parking or standing in an area with marked spaces;
- (l) At any place in violation of any posted sign; or
- (m) In excess of 24 hours, unless permission has been granted by the Physical Security office.

§ 265.17 Parking permits.

No person, except visitors, shall park a motor vehicle on the site without having a valid parking permit displayed on such motor vehicle in compliance with instructions of the issuing authority. Such permits may be revoked by the issuing authority for violation of any of the provisions of this part.

§ 265.18 Prohibited servicing of vehicles.

No person shall make nonemergency repairs on privately owned vehicles on the site.

§ 265.19 Unattended vehicles.

No person shall leave a motor vehicle unattended on the site with the engine running or a key in the ignition switch or the vehicle not effectively braked.

§ 265.20 Towing of improperly parked vehicles.

Any motor vehicle that is parked in violation of these regulations may be towed away or otherwise moved if a determination is made by a uniformed guard that it is a nuisance or hazard. A reasonable amount for the moving service and for the storage of the vehicle, if any, may be charged, and the vehicle is subject to a lien for that charge.

§ 265.21 Improper use of roads as thoroughfares.

Except as otherwise provided herein, no person shall drive a motor vehicle or bicycle onto the site for the sole purpose of using the roads of the site as a thoroughfare between roads bordering the site. This section shall not apply to bicyclists using officially approved bike paths on the site.

§ 265.22 Bicycle traffic.

No person shall ride a bicycle other than in a manner exercising due caution for pedestrian and other traffic. No person shall ride a bicycle on sidewalks or inside any building, nor shall any person park a bicycle on sidewalks or inside any building nor in a roadway or parking lot, provided, however, that these parking restrictions shall not apply to bicycles parked at bicycle racks located in these areas.

Subpart C—Buildings and Grounds**§ 265.31 Closing the site.**

As determined by the Director (Deputy Director, IBS/Boulder, for sites in Colorado), the site may be closed to the public in emergency situations and at such other times as may be necessary for the orderly conduct

of the Government's business. At such times no person shall enter the site except authorized individuals, who may be required to sign a register and display identification when requested by a uniformed guard.

§ 265.32 Trespassing.

No person shall come onto the site other than in pursuance of official government business or other properly authorized activities.

§ 265.33 Preservation of property.

No person shall, without authorization, willfully destroy, damage, or deface any building, sign, equipment, marker, or structure, tree, flower, lawn, or other public property on the site.

§ 265.34 Conformity with posted signs.

No person shall fail or refuse to comply with officially posted signs of a prohibitory nature or with directions of a uniformed guard.

§ 265.35 Nuisances.

(a) No person shall willfully disrupt the conduct of official business on the site, or engage in disorderly conduct; nor shall any person unreasonably obstruct the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, parking lots, sidewalks, or roads.

(b) No person shall litter or dispose of rubbish except in a receptacle provided for that purpose; nor shall any person throw articles of any kind from a building or from a motor vehicle or bicycle.

§ 265.36 Intoxicating beverages.

Except as expressly authorized by the Director, the consumption or use on the site of intoxicating beverages is prohibited.

§ 265.37 Narcotics and other drugs.

The possession, sale, consumption, or use on the site of narcotic or other drugs illegal under the laws of the State in which the particular site is situated is prohibited. The provisions of this section are not intended to preclude the applicability of any State or local laws and regulations with respect

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to the possession, sale, consumption, or use of narcotic or other drugs.

§ 265.38 Intoxication or other impairment of function.

No person shall enter or remain on the site while noticeably impaired by the use of intoxicating beverages or narcotics or other drugs, and any such person found on the site in such a state of impairment may be removed from the site.

§ 265.39 Weapons and explosives.

Except in connection with the conduct of official business on the site, no person other than uniformed guards specifically authorized, or other Federal, State, or local law enforcement officials so authorized, shall carry, transport, or otherwise possess on the site, firearms whether loaded or not, other dangerous or deadly weapons or materials, or explosives, either openly or concealed, without the written permission of the Director or his designee.

§ 265.40 Nondiscrimination.

No person shall discriminate against any other person because of race, creed, color, sex, or national origin, in furnishing, or by refusing to furnish to such person the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided thereby on the site.

§ 265.41 Gambling.

No person shall participate on the site in games for money or other property, or in the operation of gambling devices, the conduct of lotteries or pools, or in the selling or purchasing of numbers tickets, or the taking or placing of bets.

§ 265.42 Photography for advertising or commercial purposes; advertising and soliciting.

(a) Except as otherwise provided herein or where security regulations would preclude, photographs may be taken in entrances, lobbies, foyers, corridors, and auditoriums without prior

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approval. Photography for advertising and commercial purposes may be conducted only with the written permission of the Chief, Office of Information Activities of the National Bureau of Standards (Chief, Program Information Office, IBS/Boulder, for sites in Colorado), provided, however, that this shall not apply to photography for purposes of civic promotion.

(b) Commercial advertisements and other material which are not directly pertinent or applicable to NBS employees but which nevertheless may be of interest or benefit to them may, with the approval of the Associate Director for Administration (Executive Officer, IBS/Boulder, for sites in Colorado), be placed in an appropriate location and made available to employees who visit that area. Except with approval as provided herein, no person shall distribute commercial advertising literature or engage in commercial soliciting on the site.

§ 265.43 Pets and other animals.

Except in connection with the conduct of official business on the site or with the approval of the Associate Director for Administration (Executive Officer, IBS/Boulder, for sites in Colorado), no person shall bring upon the site any cat, dog, or other animal, provided, however, that blind persons may have the use of seeing eye dogs.

Subpart D—Penalties

§ 265.51 Penalties—other laws.

Except with respect to the laws of the State of Maryland and the State of Colorado assimilated by § 265.5 or otherwise, whoever shall be found guilty of violating these regulations is subject to a fine of not more than \$50 or imprisonment of not more than 30 days, or both (40 U.S.C. 318c). Except as expressly provided in this part, nothing contained in these regulations shall be construed to abrogate any other Federal laws or regulations, or any State and local laws and regulations applicable to the area in which the site is situated.

SUBCHAPTER G—INVENTION EVALUATION PROCEDURES

PART 270—PROCEDURES FOR THE EVALUATION OF ENERGY-RELATED INVENTIONS

Sec.

270.0 Purpose.

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270.2 Submission of invention disclosures.

270.3 Energy-related invention evaluation request form.

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AUTHORITY: Sec. 14, Pub. L. 93-577, dated December 31, 1974, 88 Stat. 1894 (42 U.S.C. 5913).

SOURCE: 41 FR 43396, Oct. 1, 1976, unless otherwise noted.

§ 270.0 Purpose.

(a) The Federal Nonnuclear Energy Research and Development Act of 1974 (Pub. L. 93-577, dated December 31, 1974 (42 U.S.C. 5901, et seq.)), hereinafter referred to as the Act, establishes a comprehensive, national program for research and development of all potentially beneficial energy sources and utilization technologies. This program is to be carried out by the Administrator of the Energy Research and Development Administration (ERDA).

(b) Section 14 of the Act directs the National Bureau of Standards (NBS) to "give particular attention to the evaluation of all promising energy-related inventions, particularly those submitted by individual inventors and small companies for the purpose of obtaining direct grants from the Administrator" of ERDA. The purpose of this part is to promulgate regulations in the implementation of section 14 of the Act.

§ 270.1 Definitions.

As used in this part:

(a) "Office" means the Office of Energy-Related Inventions.

(b) "Invention" means any invention which may be used to conserve energy,

provide a new source of energy or improve a method of harnessing known or discovered energy supplies, except nuclear energy.

(c) "Invention disclosure" means a written description of an invention.

(d) "Department" means the United States Department of Commerce.

§ 270.2 Submission of invention disclosures.

(a) Any person may submit an invention disclosure to the Office for evaluation of the invention described therein for the ultimate purpose of obtaining support from ERDA. The invention disclosure shall be accompanied by a completed Energy-Related Invention Evaluation Request form, which is specified in § 270.3.

(b) All correspondence related to an invention disclosure or inquiries related to section 14 of the Act should be addressed to:

Office of Energy-Related Inventions, National Bureau of Standards, Washington, D.C. 20234

§ 270.3 Energy-related invention evaluation request form.

(a) The Office shall furnish an Energy-Related Invention Evaluation Request form to any person who desires to submit an invention disclosure for the purpose set out in § 270.2. The form shall include, either directly or by reference:

(1) A statement of policy;

(2) A description of the invention evaluation program of the Office;

(3) An outline of the information required of the submitter, which shall include an invention disclosure in the English language, with drawings where appropriate, sufficiently complete in technical detail to convey a clear understanding of the purpose, construction, and operation of the invention described in such disclosure;

(4) A brief description of the safeguards to be taken in handling invention disclosures to protect the proprietary rights of persons submitting such disclosures;

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(5) A requirement that the submitter indicate either that the following or similar legend has been applied to the invention disclosure, or that the following legend should be applied to the invention disclosure by the Office, or that such legend in the judgment of the submitter is not required: "This invention disclosure contains information which is (i) a trade secret or (ii) commercial or financial information that is privileged or confidential.";

(6) A Memorandum of Understanding setting forth the conditions under which NBS shall accept an invention disclosure for evaluation of the invention described therein, and including, directly or by reference, the provisions of § 270.5; such Memorandum shall be signed by the person who submits the invention disclosure as a prerequisite to the evaluation of the invention described in such disclosure; and

(7) Other information deemed relevant.

(b) Where the Government is entitled to the entire right, title, and interest in an invention and such invention is described in an invention disclosure to be submitted for the purpose set out in § 270.2 of this part, the Office shall furnish to the submitter an Energy-Related Invention Evaluation Request form which shall include paragraphs (a)(1), (2), and (3) of this section and which may omit paragraphs (a)(4), (5), and (6) thereof.

§ 270.4 Statement of nondisclosure forms.

The Office shall require that those Government employees, who administer or perform the evaluations of inventions described in invention disclosures, sign Statement of Nondisclosure forms. The form shall include either directly or by reference:

(a) A brief description of the safeguards to be taken in handling the invention disclosures to protect the proprietary rights of persons submitting such disclosures;

(b) When the person, who is to sign the Statement of Nondisclosure form is a Department employee, a statement indicating that such person has read and understood 15 CFR 0.735-15(b), which prohibits the use of inside information by a Department employee, and 15 CFR 0.735-15(d),

which prohibits the disclosure of restricted information; and

(c) When the person, who is to sign the Statement of Nondisclosure form, is a government officer or employee, a statement indicating that such person has read and understood 18 U.S.C. 1905, which provides for criminal penalties which may be imposed on a government officer or employee for the unauthorized disclosure of confidential information, including trade secrets, which comes to such person in the course of his employment or official duties.

§ 270.5 Nondisclosure provisions for evaluation contracts.

(a) In any contract awarded by the Department or NBS for the evaluation of an invention described in an invention disclosure or for any other task for which a contractor receives an invention disclosure in confidence, the contractor shall agree in writing to comply with the following safeguards:

(1) To establish and maintain procedures for holding such invention disclosure in confidence;

(2) To provide the contracting officer with a signed statement from each person to whom an invention disclosure will be shown that any information which is received in confidence shall be kept in confidence by such person to the extent of the nondisclosure provisions contained in such contract; such statement shall be subject to the approval of the contracting officer;

(3) To furnish the contracting officer a description of the procedures specified in paragraph (a)(1) of this section so that their effectiveness may be determined and evaluated, and to make any reasonable changes in such procedures as may be requested by the contracting officer to increase their effectiveness;

(4) To use the information in the invention disclosure only in the performance of the work called for in the contract;

(5) Not to disclose information in the invention disclosure to anyone except as provided in the contract, without the prior written authorization of the contracting officer;

(6) Not to make, have made, or permit to be made any copies of the invention disclosure, or any portion thereof, except those copies necessary for the performance of the work called for in the contract; any proprietary legend appearing on the invention disclosure shall be reproduced on each such copy or portion thereof; and

(7) To mark each report called for in the contract with a legend, provided by the Office, which shall specify the restrictions on distribution of the report and, when appropriate, the property rights in the information in the report.

(b) In the event the contract contemplates engaging the services of an outside consultant to perform the work called for in the contract, the contractor shall prior to disclosing the invention disclosure to the consultant, bind the consultant to a written agreement which shall contain all the non-disclosure provisions in the contract. The contractor shall provide the contracting officer, or a person designated in the contract, with a copy of such agreement.

(c) When a contract for the evaluation of an invention described in an invention disclosure requires the performance of commercial feasibility studies, the contract shall provide that the contractor, notwithstanding the provisions of paragraph (a) of this section, may, in performing an analysis of the market potential of the invention, disclose to a third party the class of systems, devices or methods to which the invention belongs, and may disclose to such party in general terms the results achieved by, and the characteristics of, the system, device or method comprising the invention.

§ 270.6 Conflict of interest.

Each contract, requiring access to invention disclosures, shall provide that if, upon examination of an invention disclosure, the contractor is aware that it has any financial interest in or any relation with a third party which might affect the integrity and impartiality of its performance of the work specified in the contract, the contractor shall provide the contracting officer with a complete written report of such interest or relation prior to un-

dertaking the work and shall not proceed with the work without the prior written authorization of the contracting officer. The authorization of the contracting officer is required to assure that the integrity and impartiality of the contractor's performance of the work specified in the contract shall not be affected by such financial interest or relation.

§ 270.7 Restricted access to invention disclosures.

(a) When an invention disclosure is not accompanied by a signed Memorandum of Understanding, specified in § 270.3(a)(6) of this part, such disclosure (1) shall be handled for processing only, such as recording, classifying, and safekeeping, or (2) may be returned to the submitter without evaluation when the disclosure does not describe an invention as defined in § 270.1(b). During the processing, the distribution of the invention disclosure shall be restricted to the personnel in the Office who have been designated by the Chief of the Office to carry out the processing functions called for in this paragraph. Moreover, the invention disclosure shall not be processed beyond the Office for any purpose prior to receipt of a signed Memorandum of Understanding.

(b) When an invention disclosure is accompanied by a signed Memorandum of Understanding, such disclosure may be released to any person, who needs the information in the disclosure for administrative purposes or for evaluation of the invention described in such disclosure, and who has signed a Statement of Nondisclosure form specified in § 270.4, or who is authorized to receive the invention disclosure pursuant to a contract with the Department or NBS.

(c) In no event shall an invention disclosure be released to any person not specified in paragraph (a) or (b) of this section without the prior written authorization of the NBS Legal Advisor, provided, however, that the Chief of the Office may authorize the release of an invention disclosure to any person when (1) the invention described in such disclosure has been set forth in a written publication available

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to the public, or (2) the submitter has stated in writing that a proprietary legend on the invention disclosure is not required.

(d) Notwithstanding the provisions of paragraphs (b) and (c) of this section and § 270.8, an invention described in an invention disclosure, in which the Government is entitled to the entire right, title, and interest, may be reviewed and evaluated without receiving a signed Memorandum of Understanding specified in § 270.3(a)(6) or the signed statement specified in § 270.5(a)(2).

(e) After the Office has completed its review and evaluation of an invention disclosure pursuant to § 270.8, the Office, with the prior written permission of the person who submitted such disclosure, may forward the disclosure to ERDA:

(1) Without regard to the provisions of paragraphs (b) and (c) of this section; and

(2) With the understanding between the Office and ERDA that such disclosure shall be handled in accordance with the procedures established by ERDA for the protection of proprietary information. When such permission is not obtained by the Office, the Office may nevertheless forward such invention disclosure to ERDA subject to the provisions of paragraphs (b) and (c) of this section.

(f) Notwithstanding the provisions of any section of this part, the disclosure of any information in or related to an invention disclosure shall be subject to:

(1) The provisions of the Freedom of Information Act 5 U.S.C. 552, and the Department's regulations published in the implementation thereof;

(2) The provisions of any statute which requires the submission of information to a standing committee of the Congress, including each subcommittee thereof; and

(3) Release to a third party pursuant to an order of a court of competent jurisdiction.

§ 270.8 Review and evaluation.

(a) When an invention disclosure is accompanied by the signed Memorandum of Understanding specified in § 270.3(a)(6), such disclosure shall re-

ceive a preliminary review to determine whether it is complete and sufficient and describes an invention which may be a potentially beneficial source of energy subject to utilization technologies.

(b) After completion of a preliminary review, the Office may undertake or have undertaken an evaluation of the invention in an invention disclosure which shall include:

(1) An assessment of the validity of the technical assumptions and statements which are made in the invention disclosure concerning the invention;

(2) An assessment of the potential of the invention for energy conservation, utilization, and production;

(3) An assessment of the potential of the commercial utilization of the invention; and

(4) A recommendation on whether ERDA should support the invention.

(c) Invention disclosures submitted to the Office normally shall be evaluated in the order in which they are received except in those cases where the Chief of the Office determines that the advancement of an invention disclosure would improve the effectiveness of the program established by section 14 of the Act.

(d) When a preliminary review and/or evaluation of an invention requires a capability which is not available at NBS, the Office may enter into a contract for the performance of such review and/or evaluation with a qualified individual or firm in the private sector or into an agreement with another Federal Government department or agency for the same purpose.

§ 270.9 Recommendations on invention disclosures.

(a) Based on the review or evaluation of an invention pursuant to § 270.8, the Office shall decide whether or not to recommend the invention to ERDA for support and shall inform ERDA and the person who submitted the invention disclosure of such decision.

(b) Subject to the provisions of § 270.7(e):

(1) Where the Office recommends an invention to ERDA for support, the

Office shall furnish a report to ERDA which documents the basis for the recommendation; and

(2) Where the Office decides not to recommend an invention to ERDA, a

report which documents the basis of its decision shall be forwarded to ERDA upon its request.

SUBCHAPTER H—REGULATIONS GOVERNING APPEARANCE OF NBS EMPLOYEES IN PRIVATE LITIGATION

PART 275—POLICIES AND PROCEDURES GOVERNING THE APPEARANCE OF NBS EMPLOYEES AS WITNESSES IN PRIVATE LITIGATION

Sec.

275.1 Purpose and policy.

275.2 Testimony or production of records by NBS employees in legal proceedings not involving the United States as a named party.

275.3 Certification of records.

275.4 Request or order for testimony or production of records.

275.5 Response to request or order for testimony or production of records.

AUTHORITY: Sec. 9, 31 Stat. 1450, as amended; 15 U.S.C. 277.

SOURCE: 44 FR 17481, Mar. 22, 1979, unless otherwise noted.

§ 275.1 Purpose and policy.

(a) This part prescribes the policies and procedures of the National Bureau of Standards (NBS) with respect to testimony by NBS employees and production of data, information and records, in legal proceedings not involving the United States as a named party.

(b) NBS is the Federal agency responsible for the custody, maintenance, and development of the national standards of measurement, and the impartial development and application of measurement technologies upon which the flow of interstate and foreign commerce must necessarily depend (15 U.S.C. 272).

(c) To carry out its statutory mission effectively, NBS must apply the expertise of the many scientific and technical experts it employs exclusively to the performance of its official duties, including providing scientific and technical advisory services to other Federal agencies. It is essential that NBS also maintain a policy of strict impartiality among private litigants, and that it ensure that its employees adhere to the responsibilities for which they were employed. To these ends, it is the policy of NBS that its employees shall not testify nor otherwise appear in legal proceedings not involving the United States or its offi-

cers or employees in their official capacity as a named party in order to produce data, information, or records which concern matters related to official duties of NBS employees or the functions of NBS.

(d) For purposes of this part, "legal proceeding" includes any civil or criminal proceeding before a court of law, administrative board or commission, hearing officer, or other body conducting a legal or administrative proceeding, or any discovery proceeding in support thereof, including depositions and interrogatories.

§ 275.2 Testimony or production of records by NBS employees in legal proceedings not involving the United States as a named party.

No NBS employee shall give testimony in any legal proceeding in which the United States Government or an agency or department in the Executive Branch is not a named party, concerning official duties of an NBS employee or any function of NBS, nor produce any data, information, or record created or acquired by NBS as a result of the discharge of its official duties, without the prior written authorization of the NBS Legal Adviser.

§ 275.3 Certification of records.

Certified copies of NBS records will be provided upon request and payment of the applicable fees. Requests for certification should be addressed to the NBS Legal Adviser, National Bureau of Standards, Washington, D.C. 20234. The applicable fees include charges for certification and reproduction, the amounts of which are set out in § 4.9(a) (3) and (5) of Title 15 of the CFR. Other reproduction costs and postage fees, as appropriate, will also be borne by the requester.

§ 275.4 Request or order for testimony or production of records.

(a) A request or order for testimony of, or the production of data, information, or records by, an NBS employee in a legal proceeding not involving the

United States as a named party shall be addressed to the NBS Legal Adviser, National Bureau of Standards, Washington, D.C. 20234. A request or order for testimony shall be accompanied by an affidavit or, if that is not feasible, a statement setting forth the title of the case, the forum, the party's interest in the case, a recitation of the reasons for desiring and the intended use of the testimony, a general summary of the testimony desired, and a showing that (1) the desired testimony is not reasonably available from other sources (including an explanation of such circumstances), and (2) no NBS record in certified form provided under § 275.3 could be introduced in evidence in lieu of the testimony or other appearance requested.

(b) Any employee of NBS who is served with a subpoena or other order for or who receives a request for, testimony or the production of data, information, or records shall immediately report the service or request to the NBS Legal Adviser.

§ 275.5 Response to request or order for testimony or production of records.

(a) Except for the production of payroll, leave, or similar administrative records that may be involved in legal proceedings involving an employee of NBS in other than that employee's official capacity, testimony or the production of data, information, or records in a legal proceeding not involving the United States shall be authorized only as a rare exception. Such exception shall be based only upon a determination by the NBS Legal Adviser that NBS has a significant interest in the legal proceeding and that the outcome may affect the implementation of present policies, or where other circumstances or conditions (including the showing required in paragraph (a) of § 275.4) make it necessary to provide the data, information, or records in the public interest.

(b) When an NBS employee receives a request or order for testimony or the production of data, information, or records, the NBS Legal Adviser shall determine whether such request or order is legally binding on the employee and whether compliance with such

request or order is authorized. Upon making such determination, the NBS Legal Adviser shall accordingly instruct the employee who received such request or order.

(c) Unless otherwise expressly authorized by the NBS Legal Adviser, an employee who is requested or ordered to testify or produce data, information, or records in a legal proceeding not involving the United States as a named party shall respectfully decline to comply on the ground of the prohibition against compliance contained in this part. If a subpoena or other order is involved, the employee shall decline by appearing at the time and place specified (unless the NBS Legal Adviser determines, in consultation with the party seeking the testimony or other appearance, or the authority conducting the legal proceeding, as appropriate, that a written submission will be sufficient), accompanied by a representative of the Office of the NBS Legal Adviser, the United States Attorney's Office, or the Department of Justice, as appropriate, and explaining to the authority conducting the legal proceeding that this part prohibits the employee from complying.

(d) If an employee who follows the procedure in paragraph (c) of this section is ordered to show cause why he or she should not be cited for contempt, the NBS Legal Adviser shall request the Department of Justice to represent the employee.

(e) If the NBS Legal Adviser authorizes the testimony of an NBS employee, the Legal Adviser may arrange for the taking of the testimony by methods that are less disruptive of official activities of the employee than providing testimony in court or at a hearing. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other method allowable by law. Costs of providing testimony, including transcripts, one copy of which will be provided to the NBS Legal Adviser, will be borne by the party requesting the testimony. Such costs shall also include reimbursing NBS for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties

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in connection with the legal proceeding, including the employee's salary and applicable overhead charges and any necessary travel expenses.

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[44 FR 17481, Mar. 22, 1979; 44 FR 19383, Apr. 3, 1979]

PARTS 276—299—[Reserved]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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